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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 60

[No. LS–03–04]

RIN 0581–AC26

Mandatory Country of Origin Labeling of Fish and Shellfish

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule; extension of comment period.

SUMMARY: On October 5, 2004, the Agricultural Marketing Service (AMS) published an interim final rule (69 FR 59708) for the mandatory country of origin labeling (COOL) program for fish and shellfish as mandated by the Farm Security and Rural Investment Act of 2002 (Farm Bill) and the 2002 Supplemental Appropriations Act (Appropriations Act), which amended the Agricultural Marketing Act of 1946 (Act) to direct the Secretary of Agriculture to promulgate regulations by September 30, 2004, requiring retailers to notify their customers of the country of origin of covered commodities. The FY 2004 Consolidated Appropriations Act (Public Law 108–199) delayed the applicability of mandatory COOL for all covered commodities except wild and farm-raised fish and shellfish until September 30, 2006. AMS is extending the comment period to February 2, 2005, at the request of industry trade associations to provide interested parties with additional time to file comments.

DATES: Comments must be submitted on or before February 2, 2005, to be assured of consideration.

ADDRESSES: Send written comments to: Country of Origin Labeling Program, Room 2092–S; Agricultural Marketing Service (AMS), USDA; STOP 0249; 1400 Independence Avenue, SW., Washington, DC 20250–0249, or by facsimile to (202) 720–3499, or by e-mail to *cool@usda.gov*. Comments received will be posted to the AMS Web site at: *http://www.ams.usda.gov/cool/*. Comments sent to the above location that specifically pertain to the information collection and recordkeeping requirements should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: William Sessions, Associate Deputy Administrator, Livestock and Seed Program, AMS, USDA, by telephone on (202) 720–5707, or via e-mail to: *william.sessions@usda.gov.*

SUPPLEMENTARY INFORMATION: The Farm Bill and the Appropriations Act amended the Act to direct the Secretary of Agriculture to promulgate regulations by September 30, 2004, requiring retailers to notify their customers of the country of origin of covered commodities. The FY 2004 Consolidated Appropriations Act (Public Law 108–199) delayed the applicability of mandatory COOL for all covered commodities except wild and farm-raised fish and shellfish until September 30, 2006.

On October 5, 2004, AMS published an interim final rule (69 FR 59708) for the mandatory country of origin labeling program for fish and shellfish. The comment period was originally scheduled to end on January 3, 2005. However, two industry trade organizations have requested additional time for retailers to examine their systems in light of the requirements of the interim final rule in order to provide more meaningful comments. Further, the Food and Drug Administration (FDA) recently published the final rule to implement the Bioterrorism Act's recordkeeping requirements and more time is needed for the industry to compare the FDA regulation recordkeeping requirements with the recordkeeping requirements under the COOL interim final rule. Therefore, AMS has determined that there is sufficient justification for extending the comment period 30 days until February 2, 2005.

Authority: 7 U.S.C. 1621 *et seq.*

Dated: December 22, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–28349 Filed 12–27–04; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Parts 1806, 1822, 1902, 1925, 1930, 1940, 1942, 1944, 1951, 1955, 1956, 1965, 3560, and 3565

RIN 0575–AC13

Reinvention of the Sections 514, 515, 516 and 521 Multi-Family Housing Programs

AGENCY: Rural Housing Service, USDA.

ACTION: Interim final rule; extension of comment period.

SUMMARY: The comment period for the interim final rule is being extended an additional 30 days from December 27, 2004, in order to provide opportunities for further comment on this rule and its criteria. This interim final rule was published in the **Federal Register** on November 26, 2004, (69 FR 69032).

DATES: Comments on the interim final rule must be received on or before January 26, 2005, to be assured of consideration.

ADDRESSES: You may submit comments to this rule by any of the following methods:

- Agency Web Site: *http://rdinit.usda.gov/regs/*. Follow the instructions for submitting comments on the Web site.
- E-Mail: *comments@usda.gov*. Include the RIN number (0575-AC13) in the subject line of the message.
- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- Mail: Submit written comments via Federal Express Mail or another mail courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW, 7th Floor, Suite 701, Washington, DC 20024.

All written comments will be available for public inspection during regular work hours at the 300 7th Street, SW., address listed above.

FOR FURTHER INFORMATION CONTACT: Sue Harris-Green, Deputy Director, Multi-Family Housing Direct Loan Division, Rural Housing Service, U.S. Department of Agriculture, Room 1241, South Building, Stop 0781, 1400 Independence Avenue, SW., Washington, DC 20250–0781, telephone (202) 720–1660.

SUPPLEMENTARY INFORMATION: In the **Federal Register** dated November 26, 2004, the Rural Housing Service (RHS) published an interim final rule which had the intent of streamlining and reengineering its regulations, as well as utilizing several private sector processes and techniques in the administration of the origination, management, servicing, and preservation of its Multi-Family Housing programs. These programs include the section 515 Rural Rental Housing (RRH) loan program, the section 514/516 Farm Labor Housing loan and grant program, and the section 521 Rental Assistance (RA) program. This interim final rule combines the provisions of the Streamlining and Consolidation of the sections 514, 515, 516, and 521 Multi-Family Housing (MFH) Programs Proposed Rule published on June 2, 2003, and the Operating Assistance for Off-Farm Migrant Farmworker Projects Proposed Rule published on November 2, 2000.

Due to the complex nature of the changes in the regulation, it is in the best interest of the public to extend the period of time in which comments will be accepted. Initially, the comment period was to end on December 27, 2004. The revised ending date for the receipt of comments is now January 26, 2005.

Dated: December 16, 2004.

Gilbert Gonzalez,

Acting Under Secretary, Rural Development.

[FR Doc. 04–28240 Filed 12–27–04; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 30 and 41

[Docket No. 04–13]

RIN 1557–AC84

FEDERAL RESERVE SYSTEM

12 CFR Parts 208, 211, 222, and 225

[Docket No. R–1199]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 334 and 364

RIN 3064–AC77

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 568, 570, and 571

[No. 2004–56]

RIN 1550–AB87

Proper Disposal of Consumer Information Under the Fair and Accurate Credit Transactions Act of 2003

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

ACTION: Final rule.

SUMMARY: The OCC, Board, FDIC, and OTS (the Agencies) are adopting a final rule to implement section 216 of the Fair and Accurate Credit Transactions Act of 2003 by amending the Interagency Guidelines Establishing Standards for Safeguarding Customer Information. The final rule generally requires each financial institution to develop, implement, and maintain, as part of its existing information security program, appropriate measures to properly dispose of consumer information derived from consumer reports to address the risks associated with identity theft.

EFFECTIVE DATE: July 1, 2005.

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SUPPLEMENTARY INFORMATION:

I. Introduction

Section 216 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act or the Act) adds a new section 628 to the Fair Credit Reporting Act (FCRA), at 15 U.S.C. 1681w, that, in general, is designed to protect a consumer against the risks associated with unauthorized access to information about the consumer contained in a consumer report, such as fraud and related crimes including identity theft. Section 216 of the Act requires each of the Agencies to adopt a regulation with respect to the entities that are subject to its enforcement authority ''requiring any person that maintains or otherwise possesses consumer information, or any compilation of consumer information, derived from consumer reports for a business purpose to properly dispose of any such information or compilation.'' Pub. L. 108–159, 117 Stat. 1985–86. The FACT Act mandates that the Agencies ensure that their respective regulations are consistent with the requirements issued pursuant to the Gramm-Leach-Bliley Act (GLB Act) (Pub. L. 106–102), as well as other provisions of Federal law.

On June 8, 2004, the Agencies published a proposal to amend the Interagency Guidelines Establishing Standards for Safeguarding Customer Information (Guidelines) to require financial institutions to implement controls designed to ensure the proper disposal of ''consumer information'' within the meaning of section 216.[1] A

[1] 69 FR 31913 (June 8, 2004). The Guidelines are codified at 12 CFR parts 30, app. B (OCC); 208, app.

total of 68 comments on the proposal were submitted to the Agencies, some of which were submitted to more than one of the Agencies. Most of these comments were submitted by financial institutions and associations that represent them. A few comments were submitted by trade associations from the information destruction industry.[2]

In general, commenters expressed support for the Agencies' proposal because the new requirements would allow financial institutions sufficient latitude to adopt controls that suit their particular circumstances. Commenters offered revisions to several aspects of the proposal, notably the definitions and compliance deadlines, and the Agencies have considered each of these suggestions.

The Agencies also proposed to amend their respective regulations that implement the FCRA by adding a new provision setting forth the duties of users of consumer reports regarding identity theft. The proposed provision would require a financial institution to properly dispose of consumer information in accordance with the standards set forth in the Guidelines. The Agencies also proposed to amend their respective FCRA regulations by incorporating a rule of construction, which generally provides that the duty to properly dispose of consumer information shall not be construed to require a financial institution to maintain or destroy any record pertaining to a consumer that is not imposed under any other law or alter any requirement under any other law to maintain or destroy such a record. This rule of construction closely tracks section 628(b) of the FCRA, as added by section 216 of the FACT Act. In general, commenters supported the Agencies' proposal to amend their FCRA regulations and, in particular, urged the Agencies to retain the rule of construction in the final rule.

In accordance with section 216 of the Act, the Agencies have consulted with the FTC, the National Credit Union Administration, and the Securities and Exchange Commission to ensure that, to the extent possible, the rules adopted by the respective agencies are consistent and comparable.

II. Background

On February 1, 2001, the Agencies issued the Guidelines pursuant to sections 501 and 505 of the GLB Act (15 U.S.C. 6801 and 6805).[3] The Guidelines establish standards relating to the development and implementation of administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer information. The Guidelines apply to the financial institutions subject to the Agencies' respective jurisdictions. As mandated by section 501(b) of the GLB Act, the Guidelines require each financial institution to develop a written information security program that is designed to: (1) Ensure the security and confidentiality of customer information; (2) protect against any anticipated threats or hazards to the security or integrity of such information; and (3) protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer.[4] The Guidelines direct financial institutions to assess the risks to their customer information and customer information systems and, in turn, implement appropriate security measures to control those risks.[5] For example, under the risk-assessment framework currently imposed by the Guidelines, each financial institution must evaluate whether the controls the institution has developed sufficiently protect its customer information from unauthorized access, misuse, or alteration when the institution disposes of the information.[6]

III. Proper Disposal of Consumer Information and Customer Information

To implement section 216 of the FACT Act, the Agencies are adopting amendments to the Guidelines[7] that require each financial institution to develop and maintain, as part of its information security program, appropriate controls designed to ensure that the institution properly disposes of ''consumer information.'' The amendments to the Guidelines generally require a financial institution to properly dispose of ''consumer information'' derived from a consumer report in a manner consistent with a financial institution's existing obligations under the Guidelines to properly dispose of customer information. Although the Guidelines currently address an institution's obligations to properly dispose of customer information, the amendments now state this obligation more directly and combine it with the new requirement to properly dispose of consumer information.

The Agencies have incorporated this new requirement into the Guidelines by: (1) Adding a definition of ''consumer information,'' including illustrations of the information covered by the new term; (2) adding an objective (in paragraph II) regarding the proper disposal of customer information and consumer information; and (3) adding a provision (in paragraph III) that requires a financial institution to implement appropriate measures to properly dispose of customer information and consumer information in accordance with each of the requirements in paragraph III.

The final rule requires each financial institution to implement the appropriate measures to properly dispose of ''consumer information'' by July 1, 2005. The Agencies believe that any changes to an institution's existing information security program likely will be minimal because many of the measures that an institution already uses to dispose of ''customer information'' can be adapted to properly dispose of ''consumer information.'' Nevertheless, a few of the comments noted that the proposed period for compliance would be relatively short in light of the work required to locate and track all ''consumer information'' in a financial institution's existing information systems. Accordingly, the Agencies have determined that financial institutions should be afforded a six-month period to adjust their systems and controls.

A discussion of each proposed amendment to the Guidelines and the addition of cross-references to the Guidelines in the Agencies' FCRA regulations follows.

Consumer Information

The proposal defined ''consumer information'' to mean ''any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of the [institution] for a business

D–2 and 225, app. F (Board); 364, app. B (FDIC); 570, app. B (OTS). Citations to the Guidelines omit references to titles and publications and give only the appropriate paragraph or section number.

[2] Individual consumers and organizations representing consumers submitted comments on the proposed rule issued by the Federal Trade Commission (FTC), which was substantively similar to the Agencies' proposal. 69 FR 21388 (April 20, 2004); see *http://www.ftc.gov/os/comments/disposal/index.htm*. The Agencies have reviewed these and other comments submitted to the FTC in connection with this final rule.

[3] 66 FR 8616 (Feb. 1, 2001).

[4] Guidelines, II.B.

[5] *See generally*, III.B. and III.C.

[6] *See* 66 FR 8618. (''Under the final Guidelines, a financial institution's responsibility to safeguard customer information continues through the disposal process.'')

[7] The Agencies are renaming the ''Interagency Guidelines Establishing Standards for Safeguarding Customer Information'' to read ''Interagency Guidelines Establishing Standards for Information Security'' to make clear that the Guidelines encompass the disposal of consumer information.

purpose.'' ''Consumer information'' also was defined to mean ''a compilation of such records.''

Commenters generally supported the Agencies' proposed definition of this term, but argued that the Agencies should include statements or illustrations to clarify the nature and scope of ''consumer information.'' Several commenters found the proposed phrase ''about an individual'' to be ambiguous and urged the Agencies to adopt a definition expressly stating that ''consumer information'' only includes information that identifies a particular individual.

Similarly, some commenters supported the Agencies' explanation in the proposal that ''consumer information'' does not include information derived from a consumer report that does not identify any particular consumer, such as the mean credit score derived from a group of consumer reports. These commenters suggested that the Agencies include this example (or similar examples) in the definition.

In the final rule, as in the proposed rule, the Agencies have continued to define ''consumer information'' to mean ''any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of the [institution] for a business purpose.'' In addition, the Agencies have continued to define ''consumer information'' to mean ''a compilation of such records,'' as proposed.

The Agencies have modified the term ''consumer information,'' however, to expressly exclude from the definition ''any record that does not identify an individual.'' The Agencies believe that qualifying the term ''consumer information'' to cover only personally identifiable information appropriately focuses on the information derived from a consumer report that, if improperly disposed, could be used to commit fraud or identity theft against a consumer. The Agencies believe that limiting ''consumer information'' to information that identifies a consumer is consistent with the current law relating to the scope of the term ''consumer report'' under the FCRA and the purposes of section 216 of the FACT Act.

Under the final rule, a financial institution must implement measures to properly dispose of ''consumer information'' that identifies a consumer, such as the consumer's name and the credit score derived from a consumer report. However, this requirement does not apply to aggregate information, such as the mean credit score that is derived from a group of consumer reports, or blind data, such as a series of credit scores that do not identify the subjects of the consumer reports from which those scores are derived. The Agencies have included examples of records that illustrate this aspect of the Guidelines, but have not rigidly defined the nature and scope of personally identifiable information. The Agencies note that there are a variety of types of information apart from an individual's name, account number, or address that, depending on the circumstances or when used in combination, could identify the individual.

A few commenters argued that the term ''consumer information'' should exclude non-sensitive information about a consumer, such as names and addresses that are publicly available. These commenters urged the Agencies to limit ''consumer information'' to information about an individual's specific financial characteristics, such as payment history or account numbers, or personal characteristics, such as driver's license information. In their view, only sensitive, non-public information should be subject to the requirements of the rule because unauthorized access to or misuse of that information poses the greatest threats of identity theft against consumers. The Agencies believe that there is no basis to exclude certain classes of relatively non-sensitive information from the scope of ''consumer information'' under section 216 of the Act.

Some commenters urged the Agencies to eliminate references to business-related transactions in the discussion of the definition of ''consumer information.'' These commenters argued that the FCRA defines a ''consumer report'' only with respect to information used to determine a consumer's eligibility for ''credit or insurance to be used primarily for personal, family, or household purposes.'' [8] Thus, these commenters recommended that the Agencies remove references to business transactions that, in their view, would be inconsistent with the scope of the FCRA. The Agencies note that the FCRA defines a ''consumer report'' as encompassing a communication by a consumer reporting agency of information about a consumer that, in general, is used as a factor in establishing the consumer's eligibility for ''any other purpose authorized under section 604 [of the FCRA].'' [9] Among other permissible purposes, a consumer reporting agency lawfully may furnish a consumer report to a person which it has reason to believe ''otherwise has a legitimate business need for the information in connection with a business transaction that is initiated by the consumer.'' [10] If used in whole or in part to establish a consumer's eligibility for a business transaction that is initiated by the consumer, such as an application for a small business loan that is initiated by a sole proprietor, then that information could be a consumer report. Accordingly, a financial institution that maintains information derived from a consumer report for a business purpose including a consumer report originally obtained in connection with a ''business transaction that is initiated by the consumer,'' would be subject to the requirement to properly dispose of such information, pursuant to section 216 of the FACT Act.

As discussed in the proposal, the Agencies note that the scope of information covered by the terms ''consumer information'' and ''customer information'' will sometimes overlap, but will not always coincide. The definition of ''consumer information'' is drawn from the term ''consumer'' in section 603(c) of the FCRA, which defines a ''consumer'' as an individual, without elaboration. 15 U.S.C. 1681a(c). By contrast, ''customer information'' under the Guidelines, means nonpublic personal information about a ''customer,'' namely, an individual who obtains a financial product or service to be used primarily for personal, family, or household purposes and who has a continuing relationship with the financial institution.[11]

The relationship between ''consumer information'' and ''customer information'' can be illustrated through the following examples. Payment history information from a consumer report about an individual, who is a financial institution's customer, will be both ''consumer information'' because it comes from a consumer report and ''customer information'' because it is nonpublic personal information about a customer. In some circumstances, ''customer information'' will be broader than ''consumer information.'' For instance, information about a financial institution's own transactions with its customer is ''customer information'' but is not ''consumer information'' because it does not come from a consumer report. In other circumstances, ''consumer information'' will be broader than ''customer information.''

[8] 15 U.S.C. 1681a(d)(1)(A).

[9] 15 U.S.C. 1681a(d)(1)(C).

[10] 15 U.S.C. 1681b(a)(3)(F))i).

[11] I.C.2.b.

''Consumer information'' includes information from a consumer report that an institution obtains about an individual who applies for but does not receive a loan, an individual who guarantees a loan (including a loan to a business entity), an employee or a prospective employee, or an individual in connection with a loan to the individual's sole proprietorship. In each of these instances, the consumer reports are not ''customer information'' because the information is not about a ''customer'' within the meaning of the Guidelines.

The Agencies believe that the phrase ''derived from consumer reports'' covers all of the information about a consumer that is taken from a consumer report, including information that results in whole or in part from manipulation of information from a consumer report or information from a consumer report that has been combined with other types of information. Consequently, a financial institution that possesses any of this information must properly dispose of it. For example, any record about a consumer derived from a consumer report, such as the consumer's name and credit score, that is shared among affiliates must be disposed of properly by each affiliate that possesses that information.[12] Similarly, a consumer report that is shared among affiliated companies after the consumer has been given a notice and has elected not to opt out of that sharing, and therefore is no longer a ''consumer report'' under the FCRA,[13] would still be ''consumer information.'' Accordingly, an affiliate that receives ''consumer information'' under these circumstances must properly dispose of the information.

A few commenters suggested that the Agencies modify this provision to limit the obligation of a financial institution to properly dispose of consumer information only when the institution *knows* that the information has been derived from a consumer report. The Agencies believe that implementing such a limitation is unwarranted in light of the general duty established in section 216 of the Act which applies to ''any person that maintains or otherwise possesses consumer information,'' without regard to whether the person actually knows that it possesses such information.

The Agencies note that the proposed definition of ''consumer information'' includes the qualification ''for a business purpose,'' as set forth in section 216 of the Act. The Agencies believe that the phrase ''for a business purpose'' encompasses any commercial purpose for which a financial institution might maintain or possess ''consumer information.'' Commenters did not raise concerns about this interpretation.

Some commenters urged the Agencies to define the term ''disposal'' to clarify whether the sale, donation, or transfer of any medium containing ''consumer information'' is covered by the requirements imposed under the Guidelines. A few other commenters, however, disagreed with this suggestion and supported the Agencies' proposal, which was silent with respect to this particular term. The Agencies believe that there is no need to adopt a definition of the term ''disposal'' because, in the context of the duty imposed under section 216 of the FACT Act, the ordinary meaning of that term applies. The Agencies note that any sale, lease, or other transfer of any medium containing ''consumer information'' constitutes disposal of the information insofar as the *information itself* is not the subject of the sale, lease, or other transfer between the parties. By contrast, the sale, lease, or other transfer of consumer information from a financial institution to another party (which may be subject to limitations imposed under other laws) can be distinguished from the act of throwing out or getting rid of consumer information, and accordingly, does not constitute ''disposal'' that is subject to the Agencies' rule.

New Objective for an Information Security Program

The Agencies proposed to add a new objective regarding the proper disposal of consumer information in paragraph II.B. of the Guidelines. A few commenters expressed objections to this aspect of the proposal, mainly insofar as this provision relates to service providers.

Under the final rule, a financial institution must design its information security program to satisfy the general objective to ''[e]nsure the proper disposal of customer information and consumer information.'' The added reference to ''customer information'' more directly states an institution's overall duties with respect to disposing of information. However, because proper disposal of customer information already is part of a financial institution's obligation in designing and maintaining its information security program under the Guidelines, the inclusion of ''customer information'' in the objective does not impose a new requirement on an institution's compliance with the Guidelines.

The general objective to ''[e]nsure the proper disposal of customer information and consumer information'' replaces the proposed provision that would require an institution to develop controls ''in a manner consistent with the disposal of customer information.'' The Agencies believe that setting forth the obligation in this manner more directly states a financial institution's obligation to develop and maintain risk-based measures to dispose of both types of information properly and is consistent with the Guidelines and the Act.

The Agencies continue to believe that imposing this additional objective in paragraph II.B is important because this disposal requirement applies to a financial institution's ''consumer information'' maintained or otherwise in the possession of the institution's service providers. The Guidelines require, in part, that a financial institution ''[r]equire its service providers by contract to implement appropriate measures designed to meet the objectives of these Guidelines.''[14]

By expressly incorporating a provision in paragraph II.B., each financial institution must contractually require its service providers to develop appropriate measures for the proper disposal of consumer information and, where warranted, to monitor its service providers to confirm that they have satisfied their contractual obligations. As several commenters observed, the particular contractual arrangements that an institution may negotiate with a service provider may take varied forms or use general terms. As a result, some institutions may have existing contracts that cover the proper disposal of customer information and consumer information. The Agencies continue to believe that the parties should be allowed substantial latitude in negotiating the contractual terms appropriate to their arrangement in any manner that satisfies the objectives of the Guidelines. Accordingly, the Agencies have not prescribed any particular standards that relate to this contract requirement.

The Agencies have made a technical amendment to the definition of ''service provider'' in paragraph I.C.2. to include a reference to ''consumer information''

[12] An affiliate subject to the jurisdiction of the OCC, Board, FDIC, or OTS must properly dispose of consumer information that it possesses or maintains in accordance with the agency's rule. An affiliate subject to the jurisdiction of the FTC or the SEC must properly dispose of consumer information that it possesses or maintains in accordance with the FTC's or SEC's final rules, as applicable, which are consistent and comparable to this final rule. Savings associations and savings association subsidiaries that are not functionally regulated are subject to the OTS's Guidelines.

[13] 15 U.S.C. 1681a(d)(2)(A)(iii).

[14] III.D.2. This requirement applies to service providers located domestically and abroad.

in addition to ''customer information.'' Thus the amended definition of service provider is ''any person or entity that maintains, processes, or otherwise is permitted access to customer information or consumer information through its provision of services directly to the bank.'' Consistent with section 216 and the amendments to the Guidelines, a financial institution's obligation with respect to a service provider that has access to consumer information is limited to ensuring that the service provider properly disposes of consumer information.

The Agencies also have amended paragraph III.G.2. to allow a financial institution a reasonable period of time, after the final regulations are issued, to amend its contracts with its service providers to incorporate the necessary requirements in connection with the proper disposal of consumer information. After reviewing the comments on this provision of the proposal, which uniformly advocated a longer period of time for modifying contracts with service providers if necessary, the Agencies have determined that financial institutions must modify any affected contracts not later than July 1, 2006.

New Provision To Implement Measures To Properly Dispose of Consumer Information

The Agencies have amended paragraph III.C. (*Manage and Control Risk*) of the Guidelines by adding a new provision to require a financial institution to develop, implement, and maintain, as part of its information security program, appropriate measures to properly dispose of customer information and consumer information. Like the provision described in the proposal, this new provision requires an institution to implement these measures ''in accordance with each of the requirements in this paragraph III.'' of the Guidelines.

Paragraph III. of the Guidelines presently requires a financial institution to undertake measures to design, implement, and maintain its information security program to protect customer information and customer information systems. Because ''customer information systems'' is defined to include any methods used to dispose of customer information, a financial institution presently must use risk-based measures to protect customer information in the course of disposing of it. Building on this provision in the Guidelines, the Agencies proposed a provision in paragraph III.C. that would require a financial institution to develop controls ''in a manner consistent with the disposal of customer information.'' Commenters generally supported this provision because a financial institution would be permitted to develop and implement risk-based protections, rather than adopt particular methods for disposing of consumer information that would comply with a prescriptive standard.

Under the final rule, an institution must adopt procedures and controls to properly dispose of ''consumer information'' and ''customer information.'' Instead of describing a financial institution's obligation to dispose of ''consumer information'' in relation to the standard for ''customer information'' (which is currently set forth in discrete provisions of the Guidelines), the Agencies have determined that the obligation should be stated directly and generally. A provision that requires each financial institution to develop and maintain risk-based measures to properly dispose of customer information and consumer information more clearly states an institution's responsibilities to properly dispose of both classes of information and is consistent with the Guidelines and the Act.

Under this provision of the final rule, a financial institution must broaden the scope of its risk assessment to include an assessment of the reasonably foreseeable internal and external threats associated with the methods it uses to dispose of ''consumer information,'' and adjust its risk assessment in light of the relevant changes relating to such threats. By expressly adding this new provision, the Agencies are requiring a financial institution to integrate into its information security program each of those risk-based measures in connection with the disposal of ''consumer information,'' as set forth in paragraph III. of the Guidelines.

Some commenters urged the Agencies to adopt a detailed standard for the destruction of information or criteria that define ''proper'' methods or levels of disposal, rather than a provision that tracks the general obligation imposed under section 216 of the FACT Act. Other commenters favored the approach set forth in the proposal and argued that the general duty to ''properly dispose of consumer information'' is appropriately suited to the varying circumstances that financial institutions confront.

After reviewing the comments, the Agencies continue to believe that it is not necessary to propose a prescriptive rule describing proper methods of disposal. Nonetheless, consistent with interagency guidance previously issued through the Federal Financial Institutions Examination Council (FFIEC),[15] the Agencies expect institutions to have appropriate disposal procedures for records maintained in paper-based or electronic form. The Agencies note that an institution's information security program should ensure that paper records containing either customer or consumer information should be rendered unreadable as indicated by the institution's risk assessment, such as by shredding or any other means. Institutions also should recognize that computer-based records present unique disposal problems. Residual data frequently remains on media after erasure. Since that data can be recovered, additional disposal techniques should be applied to sensitive electronic data.[16]

Proposed Amendments to the Agencies' FCRA Regulations

As set forth in the proposal, the Agencies' final rules create a cross-reference to the Guidelines in their respective regulations that implement the FCRA [17] by adding a provision setting forth the duties of users of consumer reports regarding identity theft. Commenters generally agreed with the Agencies' proposal to create the cross-reference. In particular, commenters supported the Agencies' proposal to make explicit in the regulations the rule of construction in the statute stating that the requirement pertaining to proper disposal under the FCRA shall not be construed as requiring a person to maintain or destroy a record containing consumer information and does not alter any requirement imposed under other law to maintain or destroy such a record.

The new provision requires a financial institution to properly dispose of consumer information in accordance with the standards set forth in the Guidelines. This provision applies to an institution to the extent that the institution is covered by the scope of the Guidelines.[18] The provision also

[15] *See* FFIEC Information Technology Examination Handbook, *Information Security Booklet,* page 63 at: *http://www.ffiec. gov/ ffiecinfobase/ booklets/information_ security/ information_ security.pdf.*

[16] *See id.*

[17] 12 CFR part 41 (OCC); 12 CFR part 222 (Board); 12 CFR part 334 (FDIC); and 12 CFR part 571 (OTS). Several of the Agencies proposed establishing new parts to house their respective regulations implementing the FCRA in a notice of proposed rulemaking titled ''Fair Credit Reporting Medical Information Regulations.'' See 69 FR 23380 (April 28, 2004). As these regulations are not yet final, the new parts are established in this final rule.

[18] Bank holding companies will be subject to the FTC's disposal rule (16 CFR part 682) and functionally regulated subsidiaries of financial institutions will be subject to the SEC's disposal

incorporates a rule of construction that closely tracks the terms of section 628(b) of the FCRA, as added by section 216 of the FACT Act.[19]

IV. Regulatory Analysis

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320, including Appendix A.1, the Agencies have reviewed the final rules and determined that they contain no collections of information. The Board made this determination under authority delegated by the Office of Management and Budget.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, each agency must publish a final regulatory flexibility analysis with its final rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. (5 U.S.C. 601–612). Each of the Agencies hereby certifies that its final rule does not have a significant economic impact on a substantial number of small entities.

The rules require a financial institution subject to the jurisdiction of the appropriate agency to implement appropriate controls designed to ensure the proper disposal of ''consumer information.'' A financial institution must develop and maintain these controls as part of implementing its existing information security program for ''customer information,'' as required under the Guidelines.[20]

Any modifications to a financial institution's information security program needed to address the proper disposal of ''consumer information'' could be incorporated through the process the institution presently uses to adjust its program under paragraph III.E. of the Guidelines, particularly because of the similarities between customer information and consumer information and the measures commonly used to properly dispose of both types of information. To the extent that these rules impose new requirements for certain types of ''consumer information,'' developing appropriate measures to properly dispose of that information likely would require only a minor modification of an institution's existing information security program.

Because some ''consumer information'' will be ''customer information'' and because segregating particular records for special treatment may entail considerable costs, the Agencies believe that many banks and savings associations, including small institutions, already are likely to have implemented measures to properly dispose of both ''customer'' and ''consumer'' information. In addition, the Agencies, through the Federal Financial Institutions Examination Council (FFIEC), already have issued guidance regarding their expectations concerning the proper disposal of *all* of an institution's paper and electronic records. *See* FFIEC Information Technology Examination Handbook, *Information Security Booklet,* December 2002, p. 63.[21] Therefore, the rules do not require any significant changes for institutions that currently have procedures and systems designed to comply with this guidance.

The Agencies anticipate that, in light of current practices relating to the disposal of information in accordance with the Guidelines and the guidance issued by the FFIEC, the final rules will not impose undue costs on financial institutions. Therefore, the Agencies believe that the controls that small financial institutions will develop and implement, if any, to comply with the rules likely pose a minimal economic impact on those entities.

FDIC—Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121, 110 Stat. 857) provides generally for agencies to report rules to Congress and for Congress to review these rules. The reporting requirement is triggered in instances where the FDIC issues a final rule as defined by the Administrative Procedure Act (APA) (5 U.S.C. 551, *et seq.*). Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA.

OCC and OTS Executive Order 12866 Determination

The OCC and OTS each have determined that this rule is not a ''significant regulatory action'' under Executive Order 12866.

OCC and OTS Unfunded Mandates Reform Act of 1995 Determination

Under Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), the OCC and OTS must prepare budgetary impact statements before promulgating any rule likely to result in a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, under section 205 of the Unfunded Mandates Act, the OCC and OTS must identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

For the reasons outlined earlier, the OCC and OTS have determined that this proposal will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more, in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995 and this rulemaking requires no further analysis under the Unfunded Mandates Act.

List of Subjects

12 CFR Part 30

Banks, Banking, Consumer protection, National banks, Privacy, Reporting and recordkeeping requirements.

12 CFR Part 41

Banks, Banking, Consumer protection, National Banks, Reporting and recordkeeping requirements.

12 CFR Part 208

Banks, Banking, Consumer protection, Information, Privacy, Reporting and recordkeeping requirements.

12 CFR Part 211

Exports, Foreign banking, Holding companies, Reporting and recordkeeping requirements.

12 CFR Part 222

Banks, Banking, Holding companies, State member banks.

12 CFR Part 225

Banks, Banking, Holding companies, Reporting and recordkeeping requirements.

12 CFR Part 334

Administrative practice and procedure, Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Safety and Soundness.

rule (17 CFR part 248) or the FTC's disposal rule, as applicable.

[19] The OTS is making additional conforming changes to its regulations at 12 CFR 568.1 and 568.5, as well.

[20] In 2001, the Agencies issued final Guidelines requiring financial institutions to develop and maintain an information security program, including procedures to dispose of customer information, and each agency provided a final regulatory flexibility analysis at that time. *See* 66 FR 8625–32 (Feb. 1, 2001).

[21] *See* footnote 15, *supra*.

12 CFR Part 364

Administrative practice and procedure, Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Safety and Soundness.

12 CFR Part 568

Consumer protection, Privacy, Reporting and recordkeeping requirements, Savings associations, Security measures.

12 CFR Part 570

Accounting, Administrative practice and procedure, Bank deposit insurance, Consumer protection, Holding companies, Privacy, Reporting and recordkeeping requirements, Safety and soundness, Savings associations.

12 CFR Part 571

Consumer protection, Credit, Fair Credit Reporting Act, Privacy, Reporting and recordkeeping requirements, Savings associations.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR CHAPTER I

Authority and Issuance

■ For the reasons discussed in the joint preamble, the Office of the Comptroller of the Currency amends chapter V of title 12 of the Code of Federal Regulations by amending 12 CFR part 30 and adding a new part 41 as follows:

PART 30—SAFETY AND SOUNDNESS STANDARDS

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

Authority: 12 U.S.C. 93a, 1818, 1831–p and 3102(b); 15 U.S.C. 1681s, 1681w, 6801, and 6805(b)(1).

■ 2. Appendix B to part 30 is amended by:

■ a. Revising the heading for Appendix B to part 30 entitled ''Interagency Guidelines Establishing Standards for Safeguarding Customer Information'' to read ''Interagency Guidelines Establishing Information Security Standards'' wherever it appears in Title 12, Chapter 2, part 30;

■ b. Revising paragraph I. Introduction;

■ c. Revising paragraph I.A. by adding a new sentence at the end of the paragraph;

■ d. Redesignating paragraphs I.C.2.b. through e. as paragraphs I.C.2.d. through g., respectively;

■ e. Adding new paragraphs I.C.2.b. and c., and amending redesignated paragraph g.;

■ f. Revising the heading for paragraph II. entitled ''Standards for Safeguarding Customer Information'' to read ''Standards for Information Security'';

■ g. Removing in paragraph II.B.2. the word ''and'' at the end of the sentence;

■ h. Removing in paragraph II.B.3. the period at the end of the sentence and replacing it with ''; and;''

■ i. Adding a new paragraph II.B.4.;

■ j. Adding a new paragraph III.C.4.; and

■ k. Adding new paragraphs III.G.3. and 4. to read as follows:

Appendix B to Part 30—Interagency Guidelines Establishing Information Security Standards

* * * * *

I. Introduction

The Interagency Guidelines Establishing Information Security Standards (Guidelines) set forth standards pursuant to section 39 of the Federal Deposit Insurance Act (section 39, codified at 12 U.S.C. 1831p–1), and sections 501 and 505(b), codified at 15 U.S.C. 6801 and 6805(b) of the Gramm-Leach Bliley Act. These Guidelines address standards for developing and implementing administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer information. These Guidelines also address standards with respect to the proper disposal of consumer information, pursuant to sections 621 and 628 of the Fair Credit Reporting Act (15 U.S.C. 1681s and 1681w).

A. *Scope.* * * * The Guidelines also apply to the proper disposal of consumer information by or on behalf of such entities.

* * * * *

C. *Definitions.* * * *

2. * * *b. *Consumer information* means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of the bank for a business purpose. Consumer information also means a compilation of such records. The term does not include any record that does not identify an individual.

i. *Examples.* (1) *Consumer information* includes:

(A) A consumer report that a bank obtains;

(B) Information from a consumer report that the bank obtains from its affiliate after the consumer has been given a notice and has elected not to opt out of that sharing;

(C) Information from a consumer report that the bank obtains about an individual who applies for but does not receive a loan, including any loan sought by an individual for a business purpose;

(D) Information from a consumer report that the bank obtains about an individual who guarantees a loan (including a loan to a business entity); or

(E) Information from a consumer report that the bank obtains about an employee or prospective employee.

(2) *Consumer information* does not include:

(A) Aggregate information, such as the mean credit score, derived from a group of consumer reports; or

(B) Blind data, such as payment history on accounts that are not personally identifiable, that may be used for developing credit scoring models or for other purposes.

c. *Consumer report* has the same meaning as set forth in the Fair Credit Reporting Act, 15 U.S.C. 1681a(d).

* * * * *

g. *Service provider* means any person or entity that maintains, processes, or otherwise is permitted access to customer information or consumer information through its provision of services directly to the bank.

* * * * *

II. * * *

B. * * *

4. Ensure the proper disposal of customer information and consumer information.

III. * * *

C. * * *

4. Develop, implement, and maintain, as part of its information security program, appropriate measures to properly dispose of customer information and consumer information in accordance with each of the requirements of this paragraph III.

* * * * *

G. Implement the Standards. * * *

3. *Effective date for measures relating to the disposal of consumer information.* Each bank must satisfy these Guidelines with respect to the proper disposal of consumer information by July 1, 2005.

4. *Exception for existing agreements with service providers relating to the disposal of consumer information.* Notwithstanding the requirement in paragraph III.G.3., a bank's contracts with its service providers that have access to consumer information and that may dispose of consumer information, entered into before July 1, 2005, must comply with the provisions of the Guidelines relating to the proper disposal of consumer information by July 1, 2006.

■ 3. Add part 41 to read as follows:

PART 41—FAIR CREDIT REPORTING

Subpart A—General Provisions

Sec.
41.1 Purpose.
41.2 [Reserved]
41.3 Definitions.

Subparts B–H—[Reserved]

Subpart I—Duties of Users of Consumer Reports Regarding Identity Theft

§ 41.80–82 [Reserved]

§ 41.83 Disposal of consumer information

Authority: 12 U.S.C. 1 *et seq.*, 24 (Seventh), 93a, 481, 484, and 1818; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

Subpart A—General Provisions

§ 41.1 Purpose.

(a) *Purpose.* The purpose of this part is to establish standards for national banks regarding consumer report information. In addition, the purpose of

this part is to specify the extent to which national banks may obtain, use, or share certain information. This part also contains a number of measures national banks must take to combat consumer fraud and related crimes, including identity theft.

(b) [Reserved]

§ 41.2 [Reserved]

§ 41.3 Definitions.

As used in this part, unless the context requires otherwise:

(a)–(d) [Reserved]

(e) *Consumer* means an individual.

(f)–(n) [Reserved]

Subparts B–H—[Reserved]

Subpart I—Duties of Users of Consumer Reports Regarding Identity Theft

§ 41.80–82 [Reserved]

§ 41.83 Disposal of consumer information.

(a) *Definitions as used in this section.* (1) *Bank* means national banks, Federal branches and agencies of foreign banks, and their respective operating subsidiaries.

(b) *In general.* Each bank must properly dispose of any consumer information that it maintains or otherwise possesses in accordance with the Interagency Guidelines Establishing Information Security Standards, as set forth in appendix B to 12 CFR part 30, to the extent that the bank is covered by the scope of the Guidelines.

(c) *Rule of construction.* Nothing in this section shall be construed to:

(1) Require a bank to maintain or destroy any record pertaining to a consumer that is not imposed under any other law; or

(2) Alter or affect any requirement imposed under any other provision of law to maintain or destroy such a record.

Dated: December 16, 2004.

Julie L. Williams,

Acting Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

■ For the reasons set forth in the joint preamble, parts 208, 211, 222, and 225 of chapter II of title 12 of the Code of Federal regulations are amended as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 1. The authority citation for 12 CFR part 208 is revised to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909, 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, 78w, 1681s, 1681w, 6801 and 6805; 31 U.S.C. 5318, 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

■ 2. In § 208.3 revise paragraph (d)(1) to read as follows:

§ 208.3 Application and conditions for membership in the Federal Reserve System.

* * * * *

(d) *Conditions of membership.* (1) *Safety and soundness.* Each member bank shall at all times conduct its business and exercise its powers with due regard to safety and soundness. Each member bank shall comply with the Interagency Guidelines Establishing Standards for Safety and Soundness prescribed pursuant to section 39 of the FDI Act (12 U.S.C. 1831p–1), set forth in appendix D–1 to this part, and the Interagency Guidelines Establishing Information Security Standards prescribed pursuant to sections 501 and 505 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 and 6805) and section 216 of the Fair and Accurate Credit Transactions Act of 2003 (15 U.S.C. 1681w), set forth in appendix D–2 to this part.

* * * * *

■ 3. Amend Appendix D–2 to part 208, as follows:

■ a. The heading for Appendix D–2 to Part 208 entitled ''Interagency Guidelines Establishing Standards for Safeguarding Customer Information'' is revised to read ''Interagency Guidelines Establishing Information Security Standards'' wherever it appears in Title 12, chapter 2, part 208;

■ b. In section I., Introduction, a new sentence is added at the end of the introductory paragraph.

■ c. In section I.A., Scope, a new sentence is added at the end of the paragraph.

■ d. In section I.C.2., paragraphs b. through f. are redesignated as paragraphs 2.d. through 2.h., respectively, new paragraphs 2.b. and 2.c. are added and redesignated paragraph g. is amended.

■ e. In paragraph II. the heading entitled ''Standards for Safeguarding Customer Information'' is revised to read ''Standards for Information Security''.

■ f. At the end of paragraph II.B.2. the word ''and'' is removed.

■ g. At the end of paragraph II.B.3 the period is removed and replaced with ''; and''.

■ h. In section II.B. a new paragraph 4. is added.

■ i. In section III.C., Manage and Control Risk, a new paragraph 4. is added.

■ j. In section III.G., Implement the Standards, new paragraphs 3. and 4. are added.

Appendix D–2 to Part 208—Interagency Guidelines Establishing Information Security Standards

* * * * *

I. * * *

* * * These Guidelines also address standards with respect to the proper disposal of consumer information, pursuant to sections 621 and 628 of the Fair Credit Reporting Act (15 U.S.C. 1681s and 1681w).

A. *Scope.* * * * These Guidelines also apply to the proper disposal of consumer information by or on behalf of such entities.

* * * * *

C. * * *

2. * * *

b. *Consumer information* means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of the bank for a business purpose. Consumer information also means a compilation of such records. The term does not include any record that does not identify an individual.

i. *Examples.* (1) *Consumer information includes:*

(A) A consumer report that a bank obtains;

(B) Information from a consumer report that the bank obtains from its affiliate after the consumer has been given a notice and has elected not to opt out of that sharing;

(C) Information from a consumer report that the bank obtains about an individual who applies for but does not receive a loan, including any loan sought by an individual for a business purpose;

(D) Information from a consumer report that the bank obtains about an individual who guarantees a loan (including a loan to a business entity); or

(E) Information from a consumer report that the bank obtains about an employee or prospective employee.

(2) *Consumer information does not include:*

(A) Aggregate information, such as the mean credit score, derived from a group of consumer reports; or

(B) Blind data, such as payment history on accounts that are not personally identifiable, that may be used for developing credit scoring models or for other purposes.

c. *Consumer report* has the same meaning as set forth in the Fair Credit Reporting Act, 15 U.S.C. 1681a(d).

* * * * *

g. *Service provider* means any person or entity that maintains, processes, or otherwise is permitted access to customer information

or consumer information through its provision of services directly to the bank.

* * * * *

II. * * *

B. * * *

4. Ensure the proper disposal of customer information and consumer information.

* * * * *

III. * * *

C. * * *

4. Develop, implement, and maintain, as part of its information security program, appropriate measures to properly dispose of customer information and consumer information in accordance with each of the requirements in this paragraph III.

* * * * *

G. * * *

3. *Effective date for measures relating to the disposal of consumer information.* Each bank must satisfy these Guidelines with respect to the proper disposal of consumer information by July 1, 2005.

4. *Exception for existing agreements with service providers relating to the disposal of consumer information.* Notwithstanding the requirement in paragraph III.G.3., a bank's contracts with its service providers that have access to consumer information and that may dispose of consumer information, entered into before July 1, 2005, must comply with the provisions of the Guidelines relating to the proper disposal of consumer information by July 1, 2006.

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

■ 4. The authority citation for part 211 is revised to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1835a, 1841 *et seq.*, 3101 *et seq.*, and 3901 *et seq.*; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

■ 5. In § 211.5, revise paragraph (l) to read as follows:

§ 211.5 Edge and agreement corporations.

* * * * *

(l) *Protection of customer information and consumer information.* An Edge or agreement corporation shall comply with the Interagency Guidelines Establishing Information Security Standards prescribed pursuant to sections 501 and 505 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 and 6805) and, with respect to the proper disposal of consumer information, section 216 of the Fair and Accurate Credit Transactions Act of 2003 (15 U.S.C. 1681w), set forth in appendix D–2 to part 208 of this chapter.

* * * * *

■ 6. In § 211.24, revise paragraph (i) to read as follows:

§ 211.24 Approval of offices of foreign banks; procedures for applications; standards for approval; representative-office activities and standards for approval; preservation of existing authority.

* * * * *

(i) *Protection of customer information and consumer information.* An uninsured state-licensed branch or agency of a foreign bank shall comply with the Interagency Guidelines Establishing Information Security Standards prescribed pursuant to sections 501 and 505 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 and 6805) and, with respect to the proper disposal of consumer information, section 216 of the Fair and Accurate Credit Transactions Act of 2003 (15 U.S.C. 1681w), set forth in appendix D–2 to part 208 of this chapter.

PART 222—FAIR CREDIT REPORTING (REGULATION V)

■ 7. The authority citation for part 222 is revised to read as follows:

Authority: 15 U.S.C. 1681, 1681b, 1681s, 1681s-2, and 1681w.

■ 8. In § 222.1(b)(2)(i) remove the phrase ''paragraph (b)(2)'' and add in its place the word ''part''.

■ 9. Add a new subpart I to read as follows:

Subparts B–H—[Reserved]

Subpart I—Duties of Users of Consumer Reports Regarding Identity Theft

§ 222.80–82 [Reserved]

§ 222.83 Disposal of consumer information.

(a) *Definitions as used in this section.* (1) *You* means member banks of the Federal Reserve System (other than national banks) and their respective operating subsidiaries, branches and agencies of foreign banks (other than Federal branches, Federal agencies and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.*, 611 *et seq.*).

(b) *In general.* You must properly dispose of any consumer information that you maintain or otherwise possess in accordance with the Interagency Guidelines Establishing Information Security Standards, as required under sections 208.3(d) (Regulation H), 211.5(l) and 211.24(i) (Regulation K) of this chapter, to the extent that you are covered by the scope of the Guidelines.

(c) *Rule of construction.* Nothing in this section shall be construed to:

(1) Require you to maintain or destroy any record pertaining to a consumer that is not imposed under any other law; or

(2) Alter or affect any requirement imposed under any other provision of law to maintain or destroy such a record.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 10. In section 225.4, revise paragraph (h) to read as follows:

§ 225.4 Corporate practices.

* * * * *

(h) *Protection of customer information and consumer information.* A bank holding company shall comply with the Interagency Guidelines Establishing Information Security Standards, as set forth in appendix F of this part, prescribed pursuant to sections 501 and 505 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 and 6805). A bank holding company shall properly dispose of consumer information in accordance with the rules set forth at 16 CFR part 682.

* * * * *

■ 11. Amend Appendix F to part 225, as follows:

■ a. The heading for Appendix F to Part 225 entitled ''Interagency Guidelines Establishing Standards for Safeguarding Customer Information'' is revised to read ''Interagency Guidelines Establishing Information Security Standards'' wherever it appears in Title 12, Chapter 2, Part 225.

By order of the Board of Governors of the Federal Reserve System, December 16, 2004.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

■ For the reasons set forth in the joint preamble, the Federal Deposit Insurance Corporation amends parts 334 and 364 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 334—FAIR CREDIT REPORTING

Subparts A–H—[Reserved]

■ 1. The authority citation for part 334 reads as follows:

Authority: 12 U.S.C. 1818 and 1819 (Tenth); 15 U.S.C. 1681b, 1681s, and 1681w.

■ 2. Add a new subpart I to read as follows:

Subpart I—Duties of Users of Consumer Reports Regarding Identity Theft

Sec.

334.80–334.82 [Reserved]
334.83 Disposal of consumer information.

Subpart I—Duties of Users of Consumer Reports Regarding Identity Theft

§ 334.80–334.82 [Reserved]

§ 334.83 Disposal of consumer information.

(a) *In general.* You must properly dispose of any consumer information that you maintain or otherwise possess in accordance with the Interagency Guidelines Establishing Information Security Standards, as set forth in appendix B to part 364 of this chapter, prescribed pursuant to section 216 of the Fair and Accurate Credit Transactions Act of 2003 (15 U.S.C. 1681w) and section 501(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6801(b)), to the extent the Guidelines are applicable to you.

(b) *Rule of construction.* Nothing in this section shall be construed to:

(1) Require you to maintain or destroy any record pertaining to a consumer that is not imposed under any other law; or

(2) Alter or affect any requirement imposed under any other provision of law to maintain or destroy such a record.

PART 364—STANDARDS FOR SAFETY AND SOUNDNESS

■ 3. The authority citation for part 364 is revised to read as follows:

Authority: 12 U.S.C. 1819(Tenth), 1831p–1; 15 U.S.C. 1681s, 1681w, 6801(b), 6805(b)(1).

■ 4. Revise § 364.101(b) to read as follows:

§ 364.101 Standards for safety and soundness.

* * * * *

(b) *Interagency Guidelines Establishing Information Security Standards.* The Interagency Guidelines Establishing Information Security Standards prescribed pursuant to section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p–1), and sections 501 and 505(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6801, 6805(b)), and with respect to the proper disposal of consumer information requirements pursuant to section 628 of the Fair Credit Reporting Act (15 U.S.C. 1681w), as set forth in appendix B to this part, apply to all insured state nonmember banks, insured state licensed branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

■ 5. In Appendix B to part 364:

■ a. The heading for Appendix B to part 364 entitled ''Interagency Guidelines Establishing Standards for Safeguarding Customer Information'' is revised to read ''Interagency Guidelines Establishing Information Security Standards'' wherever it appears in Title 12, Chapter 2, part 364.

■ b. In the Introduction, the first sentence is revised and a new sentence is added at the end of the introductory paragraph.

■ c. In section I.A., Scope, the first sentence is revised.

■ d. In section I.C.2., Definitions, paragraphs 2.b. through 2.e. are redesignated as paragraphs 2.d. through 2.g., respectively, new paragraphs 2.b. and 2.c. are added and redesignated paragraph g. is revised.

■ e. In paragraph II. the heading entitled ''Standards for Safeguarding Customer Information'' is revised to read ''Standards for Information Security''.

■ f. At the end of paragraph II.B.2. the word ''and'' is removed.

■ g. At the end of paragraph II.B.3 the period is removed and replaced with ''; and''.

■ h. In section II.B. a new paragraph 4. is added.

■ i. In section III.C., Manage and Control Risk, a new paragraph 4. is added.

■ j. In section III.G, Implement the Standards, new paragraphs 3. and 4. are added.

Appendix B to Part 364—Interagency Guidelines Establishing Information Security Standards

* * * * *

I. Introduction

The Interagency Guidelines Establishing Information Security Standards (Guidelines) set forth standards pursuant to section 39 of the Federal Deposit Insurance Act, 12 U.S.C. 1831p–1, and sections 501 and 505(b), 15 U.S.C. 6801 and 6805(b), of the Gramm-Leach-Bliley Act. * * * These Guidelines also address standards with respect to the proper disposal of consumer information pursuant to sections 621 and 628 of the Fair Credit Reporting Act (15 U.S.C. 1681s and 1681w).

A. *Scope.* The Guidelines apply to customer information maintained by or on behalf of, and to the disposal of consumer information by or on behalf of, entities over which the Federal Deposit Insurance Corporation (FDIC) has authority. * * *

* * * * *

I. * * *

C. * * *

2. * * *

b. *Consumer information* means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of the bank for a business purpose. Consumer information also means a compilation of such records. The term does not include any record that does not personally identify an individual.

i. *Examples:* (1) *Consumer information* includes:

(A) A consumer report that a bank obtains;

(B) information from a consumer report that the bank obtains from its affiliate after the consumer has been given a notice and has elected not to opt out of that sharing;

(C) information from a consumer report that the bank obtains about an individual who applies for but does not receive a loan, including any loan sought by an individual for a business purpose;

(D) information from a consumer report that the bank obtains about an individual who guarantees a loan (including a loan to a business entity); or

(E) information from a consumer report that the bank obtains about an employee or prospective employee.

(2) *Consumer information* does not include:

(A) aggregate information, such as the mean score, derived from a group of consumer reports; or

(B) blind data, such as payment history on accounts that are not personally identifiable, that may be used for developing credit scoring models or for other purposes.

c. *Consumer report* has the same meaning as set forth in the Fair Credit Reporting Act, 15 U.S.C. 1681a(d).

* * * * *

g. Service provider means any person or entity that maintains, processes, or otherwise is permitted access to customer information or consumer information through its provision of services directly to the bank.

* * * * *

II. * * *

B. *Objectives.* * * *

4. Ensure the proper disposal of customer information and consumer information.

III. * * *

C. * * *

4. Develop, implement, and maintain, as part of its information security program, appropriate measures to properly dispose of customer information and consumer information in accordance with each of the requirements of this paragraph III.

III. * * *

G. * * *

3. *Effective date for measures relating to the disposal of consumer information.* Each bank must satisfy these Guidelines with respect to the proper disposal of consumer information by July 1, 2005.

4. *Exception for existing agreements with service providers relating to the disposal of consumer information.* Notwithstanding the requirement in paragraph III.G.3., a bank's contracts with its service providers that have access to consumer information and that may dispose of consumer information, entered into before July 1, 2005, must comply with the provisions of the Guidelines relating to the proper disposal of consumer information by July 1, 2006.

By order of the Board of Directors.

Dated at Washington, DC this 7th day of December, 2004.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

■ For the reasons set forth in the joint preamble, the Office of Thrift Supervision amends chapter V of title 12 of the Code of Federal Regulations by amending parts 568 and 570 and adding a new part 571 as follows:

PART 568—SECURITY PROCEDURES

■ 1. The authority citation for part 568 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1828, 1831p–1, 1881–1884; 15 U.S.C. 1681s and 1681w; 15 U.S.C. 6801 and 6805(b)(1).

■ 2. Revise the part heading for part 568 to read as shown above.

■ 3. Revise the first sentence of § 568.1(a) to read as follows:

§ 568.1 Authority, purpose, and scope.

(a) This part is issued by the Office of Thrift Supervision (OTS) under section 3 of the Bank Protection Act of 1968 (12 U.S.C 1882), sections 501 and 505(b)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 and 6805(b)(1)), and sections 621 and 628 of the Fair Credit Reporting Act (15 U.S.C. 1681s and 1681w). * * *

* * * * *

■ 4. Revise § 568.5 to read as follows:

§ 568.5 Protection of customer information.

Savings associations and their subsidiaries (except brokers, dealers, persons providing insurance, investment companies, and investment advisers) must comply with the Interagency Guidelines Establishing Information Security Standards set forth in appendix B to part 570 of this chapter.

PART 570—SAFETY AND SOUNDNESS GUIDELINES AND COMPLIANCE PROCEDURES

■ 6. The authority citation for part 570 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1828, 1831p–1, 1881–1884; 15 U.S.C. 1681s and 1681w; 15 U.S.C. 6801 and 6805(b)(1).

■ 7. Amend § 570.1(b) by removing the phrase ''Interagency Guidelines Establishing Standards for Safeguarding Customer Information'' and adding the phrase ''Interagency Guidelines Establishing Information Security Standards'' in its place.

■ 8. Amend § 570.1(c) by removing the phrase ''Interagency Guidelines Establishing Standards for Safeguarding Customer Information, and adding the phrase ''Interagency Guidelines Establishing Information Security Standards'' in its place.

■ 9. Amend § 570.2(a) by removing the phrase ''Interagency Guidelines Establishing Standards for Safeguarding Customer Information'' and adding the phrase ''Interagency Guidelines Establishing Information Security Standards'' in its place.

■ 10. Amend Appendix B to part 570 by:

■ a. Revising the heading;

■ b. Revising the introductory paragraph of section I. Introduction;

■ c. Adding a new sentence to the end of paragraph I.A. *Scope*;

■ d. Redesignating paragraphs 2.a. through 2.d. of paragraph I.C.2. *Definitions* as paragraphs 2.c. through 2.f., respectively, adding new paragraphs 2.a. and 2.b., and amending redesignated paragraph f.;

■ e. Revising the heading for section II.;

■ f. Removing the word ''and'' at the end of paragraph II.B.2.;

■ g. Removing the period at the end of paragraph II.B.3 and replacing it with ''; and'';

■ h. Adding a new paragraph II.B.4.;

■ i. Adding a new paragraph 4. to paragraph III.C. *Manage and Control Risk*; and

■ j. Adding new paragraphs 3. and 4. to paragraph III.G. *Implement the Standards.*

Appendix B to Part 570—Interagency Guidelines Establishing Information Security Standards

* * * * *

I. Introduction

The Interagency Guidelines Establishing Information Security Standards (Guidelines) set forth standards pursuant to section 39(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831p–1), and sections 501 and 505(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 and 6805(b)). These Guidelines address standards for developing and implementing administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer information. These Guidelines also address standards with respect to the proper disposal of consumer information, pursuant to sections 621 and 628 of the Fair Credit Reporting Act (15 U.S.C. 1681s and 1681w).

A. *Scope.* * * * These Guidelines also apply to the proper disposal of consumer information by or on behalf of such entities.

* * * * *

C. *Definitions.* * * *

2. * * *

a. *Consumer information* means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by you or on your behalf for a business purpose. Consumer information also means a compilation of such records. The term does not include any record that does not identify an individual.

i. *Examples.* (1) *Consumer information* includes:

(A) A consumer report that a savings association obtains;

(B) Information from a consumer report that you obtain from your affiliate after the consumer has been given a notice and has elected not to opt out of that sharing;

(C) Information from a consumer report that you obtain about an individual who applies for but does not receive a loan, including any loan sought by an individual for a business purpose;

(D) Information from a consumer report that you obtain about an individual who guarantees a loan (including a loan to a business entity); or

(E) Information from a consumer report that you obtain about an employee or prospective employee.

(2) *Consumer information* does not include:

(A) Aggregate information, such as the mean credit score, derived from a group of consumer reports; or

(B) Blind data, such as payment history on accounts that are not personally identifiable, that may be used for developing credit scoring models or for other purposes.

b. *Consumer report* has the same meaning as set forth in the Fair Credit Reporting Act, 15 U.S.C. 1681a(d).

* * * * *

f. *Service provider* means any person or entity that maintains, processes, or otherwise is permitted access to customer information or consumer information, through its provision of services directly to you.

II. Standards for Information Security * * *

B. *Objectives.* * * *

4. Ensure the proper disposal of customer information and consumer information.

III. * * *

C. *Manage and Control Risk.* * * *

4. Develop, implement, and maintain, as part of your information security program, appropriate measures to properly dispose of customer information and consumer information in accordance with each of the requirements in this paragraph III.

* * * * *

G. *Implement the Standards.* * * *

3. *Effective date for measures relating to the disposal of consumer information.* You must satisfy these Guidelines with respect to the proper disposal of consumer information by July 1, 2005.

4. *Exception for existing agreements with service providers relating to the disposal of consumer information.* Notwithstanding the requirement in paragraph III.G.3., your contracts with service providers that have access to consumer information and that may dispose of consumer information, entered into before July 1, 2005, must comply with the provisions of the Guidelines relating to the proper disposal of consumer information by July 1, 2006.

■ 11. Add a new part 571 to read as follows:

PART 571—FAIR CREDIT REPORTING

Subpart A—General Provisions

Sec.
571.1 Purpose and scope.
571.2 [Reserved]
571.3 Definitions.

Subparts B–H [Reserved]

Subpart I—Duties of Users of Consumer Reports Regarding Identity Theft

571.80–82 [Reserved]
§ 571.83 Disposal of consumer information.

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1828, 1831p–1, 1881–1884; 15 U.S.C. 1681s and 1681w; 15 U.S.C. 6801 and 6805(b)(1).

Subpart A—General Provisions

§ 571.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to establish standards regarding consumer report information. In addition, the purpose of this part is to specify the extent to which you may obtain, use, or share certain information. This part also contains a number of measures you must take to combat consumer fraud and related crimes, including identity theft.

(b) *Scope.*

(1) [Reserved]

(2) *Institutions covered.* (i) Except as otherwise provided in this paragraph (b)(2), this part applies to savings associations whose deposits are insured by the Federal Deposit Insurance Corporation (and federal savings association operating subsidiaries in accordance with § 559.3(h)(1) of this chapter).

(ii) [Reserved]

(iii) [Reserved]

§ 571.2 [Reserved]

§ 571.3 Definitions.

As used in this part, unless the context requires otherwise:

(a)–(d) [Reserved]

(e) *Consumer* means an individual.

(f)–(n) [Reserved]

(o) *You* means savings associations whose deposits are insured by the Federal Deposit Insurance Corporation and federal savings association operating subsidiaries.

Subparts B–H [Reserved]

Subpart I—Duties of Users of Consumer Reports Regarding Identity Theft

§ 571.80–82 [Reserved]

§ 571.83 Disposal of consumer information.

(a) *In general.* You must properly dispose of any consumer information that you maintain or otherwise possess in accordance with the Interagency Guidelines Establishing Information Security Standards, as set forth in appendix B to part 570, to the extent that you are covered by the scope of the Guidelines.

(b) *Rule of construction.* Nothing in this section shall be construed to:

(1) Require you to maintain or destroy any record pertaining to a consumer that is not imposed under any other law; or

(2) Alter or affect any requirement imposed under any other provision of law to maintain or destroy such a record.

By the Office of Thrift Supervision,

Dated: November 30, 2004.

James E. Gilleran,

Director.

[FR Doc. 04–27962 Filed 12–27–04; 8:45 am]

BILLING CODE 4819–13–P;6210–10–P;6714–01–P;6720–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. 1998N–1111]

Gastroenterology-Urology Devices; Classification for External Penile Rigidity Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying external penile rigidity devices intended to create or maintain sufficient penile rigidity for sexual intercourse into class II (special controls). FDA also is exempting these devices from premarket notification requirements. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance document that will serve as the special control for the device.

DATES: This rule is effective January 27, 2005.

FOR FURTHER INFORMATION CONTACT: Janine Morris, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*) as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (Public Law 101–629), the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), and the Medical Device User Fee and Modernization Act of 2002 (Public Law 107–250), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, FDA refers to devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), as ''preamendments devices.'' FDA classifies these devices after the agency takes the following steps: (1) Receives a recommendation from a device classification panel (an FDA advisory committee); (2) publishes the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) publishes a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

FDA refers to devices that were not in commercial distribution before May 28, 1976, as ''postamendments devices.'' These devices are classified automatically by statute (section 513(f) of the act into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until FDA initiates the following procedures: (1) FDA reclassifies the device into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with new section 513(f)(2) of the act, as amended by FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval.

The agency determines whether new devices are substantially equivalent to

predicate devices by means of the premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807).

Consistent with the act and the regulations, FDA consulted with the Gastroenterology and Urology Devices Panel (the panel), an FDA advisory committee, regarding the classification of this device.

FDAMA added a new section 510(m) to the act (21 U.S.C. 360(m)). New section 510(m) of the act provides that a class II device may be exempted from the premarket notification requirements under section 510(k) of the act, if the agency determines that premarket notification is not necessary to assure the safety and effectiveness of the device. FDA has determined that premarket notification is not necessary to assure the safety and effectiveness of external penile rigidity devices.

FDA believes that for devices of a type generally exempt from premarket notification, certain modifications to these devices may change the intended use of these devices to an intended use that is of substantial importance in preventing impairment of human health, or may cause these devices to present unreasonable risks of illness or injury. Accordingly, devices changed in this manner would require premarket notification. For example, FDA considers a class II device to be subject to premarket notification requirements if the device operates using a different fundamental scientific technology than that used by a legally marketed device in that generic type.

II. Regulatory History of the Device

In the **Federal Register** of March 17, 2004 (69 FR 12598), FDA proposed to classify external penile rigidity devices intended to create or maintain sufficient penile rigidity for sexual intercourse into class II (special controls). FDA also proposed to exempt the devices from premarket notification requirements. Also in the **Federal Register** of March 17, 2004 (69 FR 26398), FDA announced the availability of a draft guidance document that FDA intended to serve as the special control for external penile rigidity devices. FDA invited interested persons to comment on the draft guidance document and invited comment on the proposed regulation by June 15, 2004. FDA received no comments on the proposed rule or draft guidance.

III. Summary of Final Rule

In accordance with 21 CFR 860.84(g)(2), FDA is classifying external penile rigidity devices into class II (special controls). FDA is codifying the classification of external penile rigidity devices by adding § 876.5020. The agency is also exempting these devices from premarket notification requirements. The guidance document entitled ''Class II Special Controls Guidance Document: External Penile Rigidity Devices'' will serve as the special control for external penile rigidity devices. Following the effective date of the final classification rule, manufacturers will need to address the issues covered in this special control guidance. However, the manufacturer need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness. For the convenience of the reader, in part 876 (21 CFR part 876) FDA is also adding § 876.1(e) to inform the reader where to find guidance documents referenced in that part.

IV. Analysis of Comments and FDA's Response

FDA received no comments on the proposed rule. Therefore, under section 513 of the act, FDA is adopting the summary of reasons for the panel's recommendation and the summary of data upon which the panel's recommendation is based. FDA is also adopting the assessment of the risks to public health stated in the proposed rule published on March 17, 2004. FDA is issuing this final rule which classifies the generic type of device, external penile rigidity devices, into class II (special controls). In addition, FDA, on its own initiative, is exempting external penile rigidity devices from premarket notification requirements.

V. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages, distributive impacts, and equity). The agency believes that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This final rule will relieve a burden and simplify marketing by exempting the devices from premarket notification requirements. The guidance document is based on existing review practices and will not impose new burdens on manufacturers of these devices. The agency, therefore, certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any 1 year. The current threshold after adjustment for inflation is $110 million. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

VII. Federalism

FDA has analyzed the final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies conferring substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order. As a result, a federalism summary impact statement is not required.

VIII. Paperwork Reduction Act of 1995

FDA concludes that this rule contains no collection of information that is subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

IX. References

The following references have been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. These references may be seen by

interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee transcript, August 7, 1997.

2. Lewis J.H. *et al.*, ''A Way to Help Your Patients Who Use Vacuum Devices,'' Contemporary Urology, vol. 3, No. 12: 15–24, 1991.

3. Montague, D.K. *et al.*, ''Clinical Guidelines Panel on Erectile Dysfunction: Summary Report on the Treatment of Erectile Dsyfunction,'' Journal of Urology, 156: 2007–2011, 1996.

4. NIH Consensus Statement, ''Impotence,'' National Institutes of Health, vol. 10, No. 4, 1992.

List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 876 is amended as follows:

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

1. The authority citation for 21 CFR part 876 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

2. Section 876.1 is amended by adding paragraph (e) to read as follows:

§ 876.1 Scope.

* * * * *

(e) Guidance documents referenced in this part are available on the Internet at *http://www.fda.gov/cdrh/guidance.html*.

3. Section 876.5020 is added to subpart F to read as follows:

§ 876.5020 External penile rigidity devices.

(a) *Identification*. External penile rigidity devices are devices intended to create or maintain sufficient penile rigidity for sexual intercourse. External penile rigidity devices include vacuum pumps, constriction rings, and penile splints which are mechanical, powered, or pneumatic devices.

(b) *Classification*. Class II (special controls). The devices are exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 876.9. The special control for these devices is the FDA guidance document entitled ''Class II Special Controls Guidance Document: External Penile Rigidity Devices.'' See § 876.1(e) for the availability of this guidance document.

Dated: December 15, 2004.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 04–28252 Filed 12–27–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 884

[Docket No. 2004N–0530]

Medical Devices; Obstetrical and Gynecological Devices; Classification of the Assisted Reproduction Laser System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the assisted reproduction laser system into class II (special controls). The special control that will apply to the device is the guidance document entitled ''Class II Special Controls Guidance Document: Assisted Reproduction Laser Systems.'' The agency is classifying this device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of the guidance document that is the special control for this device.

DATES: This rule is effective January 27, 2005. The classification was effective November 4, 2004.

FOR FURTHER INFORMATION CONTACT: Michael Bailey, Center for Devices and Radiological Health (HFZ–400), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180, ext. 130.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of FDA's regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a document in the **Federal Register** announcing such classification (section 513(f)(2) of the act).

In accordance with section 513(f)(1) of the act, FDA issued a document on August 10, 2004, classifying the Hamilton Thorne Zona Infrared Laser Optical System (ZILOS-tkr) into class III, because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device which was subsequently reclassified into class I or class II. On August 25, 2004, Hamilton Thorne Biosciences, Inc., submitted a petition requesting classification of this device under section 513(f)(2) of the act. The manufacturer recommended that the device be classified into class II (Ref. 1).

In accordance with section 513(f)(2) of the act, FDA reviewed the petition in order to classify the device under the criteria for classification set forth in 513(a)(1) of the act. Devices are to be classified into class II if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the petition, FDA has determined that the device can be classified in class II with the establishment of special controls. FDA believes that class II special controls, in addition to general controls, will provide reasonable assurance of the safety and effectiveness of the device.

The device is assigned the generic name assisted reproduction laser system and it is identified as a device that images, targets, and controls the power and pulse duration of a laser beam used to ablate a small tangential hole in, or

to thin, the zona pellucida of an embryo for assisted hatching or other assisted reproduction procedures.

The potential risks to health associated with the device are: (1) Damage to the embryo, (2) ineffective treatment, (3) hazards associated with electrical equipment, and (4) electromagnetic interference and electrostatic discharge hazards. The special controls guidance document entitled ''Class II Special Controls Document: Assisted Reproduction Laser Systems'' aids in mitigating the risks by recommending performance characteristics, safety testing, and appropriate labeling.

Thus, in addition to the general controls of the act, an assisted reproduction laser system, is subject to the special controls guidance document. FDA believes that following the class II special controls guidance document generally addresses the risks to health identified in the previous paragraph. On November 4, 2004, FDA issued an order to the petitioner classifying the device as described previously into class II and is codifying this classification by adding 21 CFR 884.6200.

Following the effective date of this final classification rule, any firm submitting a 510(k) (premarket notification) will need to address the issues covered in the special controls guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness; therefore, the device is not exempt from premarket notification requirements. Thus, persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the device they intend to market.

II. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is not a significant regulatory action under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because classification of this device type into class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs, the agency certifies that the final rule will not have a significant impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $110 million. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

IV. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

V. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Reference

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition from Hamilton Thorne Biosciences, Inc., dated August 25, 2004.

List of Subjects in 21 CFR Part 884

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 884 is amended as follows:

PART 884–OBSTETRICAL AND GYNECOLOGICAL DEVICES

■ 1. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 884.6200 is added to subpart G to read as follows:

§ 884.6200 Assisted reproduction laser system.

(a) *Identification*. The assisted reproduction laser system is a device that images, targets, and controls the power and pulse duration of a laser beam used to ablate a small tangential hole in, or to thin, the zona pellucida of an embryo for assisted hatching or other assisted reproduction procedures.

(b) *Classification*. Class II (special controls). The special control is FDA's guidance document entitled ''Class II Special Controls Guidance Document: Assisted Reproduction Laser Systems.'' See § 884.1(e) for the availability of this guidance document.

Dated: December 15, 2004.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 04–28251 Filed 12–27–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9171]

RINs 1545–AY87; 1545–BC03

New Markets Tax Credit

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: These regulations finalize the rules relating to the new markets tax credit under section 45D and replace the temporary regulations which expire on December 23, 2004. A taxpayer making a qualified equity investment in a qualified community development entity that has received a new markets tax credit allocation may claim a 5-percent tax credit with respect to the qualified equity investment on each of the first 3 credit allowance dates and a 6-percent tax credit with respect to the qualified equity investment on each of the remaining 4 credit allowance dates.

DATES: *Effective Date:* These regulations are effective December 22, 2004.

Date of Applicability: For date of applicability see § 1.45D–1(h).

FOR FURTHER INFORMATION CONTACT: Paul F. Handleman or Lauren R. Taylor, (202) 622–3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1765. Responses to this collection of information are mandatory so that a taxpayer may claim a new markets tax credit on each credit allowance date during the 7-year credit period and report compliance with the requirements of section 45D to the Secretary.

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

The estimated annual burden per respondent varies from 15 minutes to 5 hours, depending on individual circumstances, with an estimated average of 2.5 hours.

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

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

Background

This document amends 26 CFR part 1 to provide rules relating to the new markets tax credit under section 45D of the Internal Revenue Code (Code). On December 26, 2001, the IRS published in the **Federal Register** temporary and proposed regulations (the 2001 temporary regulations) (66 FR 66307, 66 FR 66376). On March 11, 2004, the IRS published in the **Federal Register** temporary and proposed regulations revising and clarifying the 2001 temporary regulations (the 2004 temporary regulations) (69 FR 11507; 69 FR 11561). On March 14, 2002, and June 2, 2004, the IRS and Treasury Department held public hearings on the 2001 temporary regulations and the 2004 temporary regulations, respectively. Written and electronic comments responding to the temporary regulations and notices of proposed rulemaking were received. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision, and the corresponding temporary regulations are removed. The revisions are discussed below.

Section 45D was added to the Code by section 121(a) of the Community Renewal Tax Relief Act of 2000 (Pub. L. 106–554). The Secretary has delegated certain administrative, application, allocation, monitoring, and other programmatic functions relating to the new markets tax credit program to the Under Secretary (Domestic Finance), who in turn has delegated those functions to the Community Development Financial Institutions Fund.

Sections 221 and 223 of the American Jobs Creation Act of 2004 (Pub. L. 108–357) amended the definition of a low-income community under section 45D(e). This document does not provide guidance on these amendments. The IRS and Treasury Department are studying the amendments for guidance in the near future.

Explanation of Provisions

General Overview

Taxpayers may claim a new markets tax credit on a credit allowance date in an amount equal to the applicable percentage of the taxpayer's qualified equity investment in a qualified community development entity (CDE). The credit allowance date for any qualified equity investment is the date on which the investment is initially made and each of the 6 anniversary dates thereafter. The applicable percentage is 5 percent for the first 3 credit allowance dates and 6 percent for the remaining credit allowance dates.

A CDE is any domestic corporation or partnership if: (1) The primary mission of the entity is serving or providing investment capital for low-income communities or low-income persons; (2) the entity maintains accountability to residents of low-income communities through their representation on any governing board of the entity or on any advisory board to the entity; and (3) the entity is certified by the Secretary for purposes of section 45D as being a CDE.

The new markets tax credit may be claimed only for a qualified equity investment in a CDE. A qualified equity investment is any equity investment in a CDE for which the CDE has received an allocation from the Secretary if, among other things, the CDE uses substantially all of the cash from the investment to make qualified low-income community investments. Under a safe harbor, the substantially-all requirement is treated as met if at least 85 percent of the aggregate gross assets of the CDE are invested in qualified low-income community investments.

Qualified low-income community investments consist of: (1) Any capital or equity investment in, or loan to, any qualified active low-income community business; (2) the purchase from another CDE of any loan made by such entity that is a qualified low-income community investment; (3) financial counseling and other services to businesses located in, and residents of, low-income communities; and (4) certain equity investments in, or loans to, a CDE.

In general, a qualified active low-income community business is a corporation or a partnership if for the taxable year: (1) At least 50 percent of the total gross income of the entity is derived from the active conduct of a qualified business within any low-income community; (2) a substantial portion of the use of the tangible property of the entity is within any low-income community; (3) a substantial portion of the services performed for the

entity by its employees is performed in any low-income community; (4) less than 5 percent of the average of the aggregate unadjusted bases of the property of the entity is attributable to certain collectibles; and (5) less than 5 percent of the average of the aggregate unadjusted bases of the property of the entity is attributable to certain nonqualified financial property.

A recapture event requiring an investor to recapture credits previously taken occurs for an equity investment in a CDE if the CDE: (1) Ceases to be a CDE; (2) ceases to use substantially all of the proceeds of the equity investment for qualified low-income community investments; or (3) redeems the investor's equity investment. In addition, the investor's basis in any qualified equity investment is reduced by the amount of the new markets tax credit.

Substantially All

As indicated above, a CDE must use substantially all of the cash from a qualified equity investment to make qualified low-income community investments. Section 1.45D–1T(c)(5)(i) provides that the substantially-all requirement is treated as satisfied for an annual period if either the direct-tracing calculation under § 1.45D–1T(c)(5)(ii), or the safe harbor calculation under § 1.45D–1T(c)(5)(iii), is performed every six months and the average of the two calculations for the annual period is at least 85 percent. The final regulations clarify that a CDE may choose the same two testing dates for all qualified equity investments regardless of the date each qualified equity investment was initially made. To conform the annual testing requirement with the 12-month time limit for making qualified low-income community investments, the final regulations provide that for the first annual period, the substantially-all calculation may be performed on a single testing date. The final regulations also amend the beginning of the 12-month period for making qualified low-income community investments to provide that the 12-month period begins on the same date as the beginning of the first annual period of the 7-year credit period.

Section 1.45D–1T(d)(3) provides that reserves (not in excess of 5 percent of the taxpayer's cash investment under § 1.45D–1T(b)(4)) maintained by the CDE for loan losses or for additional investments in existing qualified low-income community investments are treated as invested in a qualified low-income community investment. In response to comments, the final regulations provide that reserves include fees paid to third parties to protect against loss of all or a portion of the principal of, or interest on, on a loan that is a qualified low-income community investment.

Qualified Active Low-Income Community Business

As indicated above, qualified low-income community investments include any capital or equity investment in, or loan to, any qualified active low-income community business. Under § 1.45D–1T(d)(4)(i)(B), an entity is a qualified active low-income community business only if, among other requirements, at least 40 percent of the use of the tangible property of such entity (whether owned or leased) is within any low-income community. In response to comments, the final regulations provide an example of how the tangible property test applies to property that is used both outside and inside a low-income community. The example demonstrates that use is measured based on the entity's business hours of operation and does not include non-business hours.

Under section 45D(d)(2)(C), a qualified active low-income community business includes any trade or business that would qualify as a qualified active low-income community business if such trade or business were separately incorporated. Commentators requested clarification of how this rules applies.

The final regulations provide that a CDE may treat any trade or business (or portion thereof) as a qualified active low-income community business if the trade or business (or portion thereof) would meet the requirements to be a qualified active low-income community business if the trade or business (or portion thereof) were separately incorporated and a complete and separate set of books and records is maintained for that trade or business (or portion thereof). The final regulations further provide, however, that under this rule a CDE's capital or equity investment or loan is not a qualified low-income community investment to the extent the proceeds of the investment or loan are not used for the trade or business (or portion thereof) that is treated as a qualified active low-income community business.

Section § 1.45D–1T(d)(4)(iv) provides that an entity will be treated as engaged in the active conduct of a trade or business if, at the time the CDE makes a capital or equity investment in, or loan to, the entity, the CDE reasonably expects that the entity will generate revenues (or, in the case of a nonprofit corporation, receive donations) within 3 years after the date the investment or loan is made. The final regulations amend this rule with respect to a nonprofit corporation by providing that the nonprofit corporation must be engaged in an activity that furthers its purpose as a nonprofit corporation within the 3-year period.

Under § 1.45D–1T(d)(4)(i)(E), an entity is a qualified active low-income community business only if, among other requirements, less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to nonqualified financial property (as defined in section 1397C(e)). Section 1397C(e)(1) contains an exception to the definition of nonqualified financial property for reasonable amounts of working capital held in cash, cash equivalents, or debt instruments with a term of 18 months or less. The final regulations provide that, for these purposes, the proceeds of a capital or equity investment or loan by a CDE that will be expended on construction of real property within 12 months after the date the investment or loan is made qualify as a reasonable amount of working capital.

Section 45D(d)(3)(A) provides that the rental to others of real property located in any low-income community is treated as a qualified business only if, among other requirements, there are substantial improvements located on such property. Commentators requested clarification of the term *substantial improvements*. The final regulations provide that the term *substantial improvements* means improvements the cost basis of which equals or exceeds 50 percent of the cost basis of the land on which the improvements are located and the costs of which are incurred after the date the CDE makes the investment or loan. In addition, the final regulations provide that a CDE's investment in or loan to a business engaged in the rental of real property is not a qualified low-income community investment to the extent any lessee of the real property is not a qualified business.

Recapture

As indicated above, there is a recapture event with respect to an equity investment in a CDE if such investment is redeemed by the CDE. Commentators requested clarification of when distributions by a CDE to its investors will be treated as redemptions. The final regulations provide guidance on when a distribution by a CDE that is a corporation for Federal tax purposes will be treated as a redemption.

Some commentators suggested that, in the case of a CDE that is treated as a partnership for Federal tax purposes, a redemption should be limited to purchases by the CDE of a partner's

capital interest. Alternatively, commentators requested guidance on how to distinguish between a return of capital and a distribution of profits if a return of capital is treated as a redemption. In response to comments, the final regulations provide a safe harbor under which cash distributions by a partnership will not be treated as a redemption. Under the safe harbor, a pro rata cash distribution by the CDE to its partners based on each partner's capital interest in the CDE during the taxable year will not be treated as a redemption if the distribution does not exceed the CDE's operating income (as defined in the final regulations) for the taxable year. In addition, a non-pro rata *de minimis* cash distribution by a CDE to a partner or partners during the taxable year will be not treated as a redemption. A non-pro rata *de minimis* cash distribution may not exceed the lesser of 5 percent of the CDE's operating income for that taxable year or 10 percent of the partner's capital interest in the CDE.

Commentators suggested that cure periods be provided to enable CDEs to correct any noncompliance with the requirements under section 45D. One commentator suggested that a cure period be provided to allow an investment that no longer qualifies as a qualified low-income community investment to be replaced with a qualifying investment by the end of the calendar year following the year the original investment lost its status as a qualified low-income community investment. Other commentators suggested that, if a qualified equity investment fails the substantially-all requirement, the failure should not be a recapture event if the CDE corrects the failure within 6 months after the date the CDE discovers (or reasonably should have discovered) the failure. The final regulations provide that, if a qualified equity investment fails the substantially-all requirement, the failure is not a recapture event if the CDE corrects the failure within 6 months after the date the CDE becomes aware (or reasonably should have become aware) of the failure. Only one correction is permitted for each qualified equity investment during the 7-year credit period.

Other Issues

Section 45D(i)(1) authorizes the Secretary to prescribe regulations as may be appropriate to carry out section 45D including regulations that limit the new markets tax credit for investments that are directly or indirectly subsidized by other Federal tax benefits (including the low-income housing credit under section 42 and the exclusion from gross income under section 103). The final regulations do not prohibit a CDE from purchasing tax-exempt bonds because tax-exempt financing provides a subsidy to borrowers and not bondholders. However, the final regulations provide that if a CDE makes a capital or equity investment or loan with respect to a qualified low-income building under section 42, the investment or loan is not a qualified low-income community investment to the extent the building's eligible basis under section 42(d) is financed by the proceeds of the investment or loan.

Effective Dates

The final regulations are effective December 22, 2004, and may be applied by taxpayers before December 22, 2004. However, both the definition of the term *substantial improvements* and the requirement that each lessee be a qualified business apply to qualified low-income community investments made on or after February 22, 2005.

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. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that any burden on taxpayers is minimal. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notices of proposed rulemaking preceding these regulations were 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 Paul F. Handleman, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

Section 1.45D–1 also issued under 26 U.S.C. 45D(i); * * *

■ **Par. 2.** Section 1.45D–1 is added to read as follows:

§ 1.45D–1 New markets tax credit.

(a) *Table of contents.* This paragraph lists the headings that appear in § 1.45D–1.

(a) Table of contents
(b) Allowance of credit
(*1*) In general
(*2*) Credit allowance date
(3) Applicable percentage
(4) Amount paid at original issue
(c) Qualified equity investment
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(3) Equity investments made prior to allocation
(i) In general
(ii) Exceptions
(A) Allocation applications submitted by August 29, 2002
(B) Other allocation applications
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(4) Limitations
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(i) Investment in a qualified active low-income community business
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(2) Payments of, or for, capital, equity or principal
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(*2*) Construction of real property
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(iii) Exclusions
(A) Trades or businesses involving intangibles
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(C) Farming
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(i) In general
(ii) Control
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(B) Definition of control
(C) Disregard of control
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(8) Special rule for certain loans
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(ii) Example
(e) Recapture
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(2) Recapture event
(3) Redemption
(i) Equity investment in a C corporation
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(4) Bankruptcy
(5) Waiver of requirement or extension of time
(i) In general
(ii) Manner for requesting a waiver or extension
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(7) Example
(f) Basis reduction
(1) In general
(2) Adjustment in basis of interest in partnership or S corporation
(g) Other rules
(1) Anti-abuse
(2) Reporting requirements
(i) Notification by CDE to taxpayer
(A) Allowance of new markets tax credit
(B) Recapture event
(ii) CDE reporting requirements to Secretary
(iii) Manner of claiming new markets tax credit
(iv) Reporting recapture tax
(3) Other Federal tax benefits
(i) In general
(ii) Low-income housing credit
(4) Bankruptcy of CDE
(h) Effective dates
(1) In general
(2) Exception for certain provisions

(b) *Allowance of credit*—(1) *In general.* For purposes of the general business credit under section 38, a taxpayer holding a qualified equity investment on a credit allowance date which occurs during the taxable year may claim the new markets tax credit determined under section 45D and this section for such taxable year in an amount equal to the applicable percentage of the amount paid to a qualified community development entity (CDE) for such investment at its original issue. *Qualified equity investment* is defined in paragraph (c) of this section. *Credit allowance date* is defined in paragraph (b)(2) of this section. *Applicable percentage* is defined in paragraph (b)(3) of this section. A *CDE* is a qualified community development entity as defined in section 45D(c). The amount paid at original issue is determined under paragraph (b)(4) of this section.

(2) *Credit allowance date.* The term *credit allowance date* means, with respect to any qualified equity investment—

(i) The date on which the investment is initially made; and

(ii) Each of the 6 anniversary dates of such date thereafter.

(3) *Applicable percentage.* The *applicable percentage* is 5 percent for the first 3 credit allowance dates and 6 percent for the other 4 credit allowance dates.

(4) *Amount paid at original issue.* The amount paid to the CDE for a qualified equity investment at its original issue consists of all amounts paid by the taxpayer to, or on behalf of, the CDE (including any underwriter's fees) to purchase the investment at its original issue.

(c) *Qualified equity investment*—(1) *In general.* The term *qualified equity investment* means any equity investment (as defined in paragraph (c)(2) of this section) in a CDE if—

(i) The investment is acquired by the taxpayer at its original issue (directly or through an underwriter) solely in exchange for cash;

(ii) Substantially all (as defined in paragraph (c)(5) of this section) of such cash is used by the CDE to make qualified low-income community investments (as defined in paragraph (d)(1) of this section); and

(iii) The investment is designated for purposes of section 45D and this section by the CDE on its books and records using any reasonable method.

(2) *Equity investment.* The term *equity investment* means any stock (other than nonqualified preferred stock as defined in section 351(g)(2)) in an entity that is a corporation for Federal tax purposes and any capital interest in an entity that is a partnership for Federal tax purposes. See §§ 301.7701–1 through 301.7701–3 of this chapter for rules governing when a business entity, such as a business trust or limited liability company, is classified as a corporation or a partnership for Federal tax purposes.

(3) *Equity investments made prior to allocation*—(i) *In general.* Except as provided in paragraph (c)(3)(ii) of this section, an equity investment in an entity is not eligible to be designated as a qualified equity investment if it is made before the entity enters into an allocation agreement with the Secretary. An *allocation agreement* is an agreement between the Secretary and a CDE relating to a new markets tax credit allocation under section 45D(f)(2).

(ii) *Exceptions.* Notwithstanding paragraph (c)(3)(i) of this section, an equity investment in an entity is eligible to be designated as a qualified equity investment under paragraph (c)(1)(iii) of this section if—

(A) *Allocation applications submitted by August 29, 2002.*

(*1*) The equity investment is made on or after April 20, 2001;

(*2*) The designation of the equity investment as a qualified equity investment is made for a credit allocation received pursuant to an allocation application submitted to the Secretary no later than August 29, 2002; and

(*3*) The equity investment otherwise satisfies the requirements of section 45D and this section; or

(B) *Other allocation applications.*

(*1*) The equity investment is made on or after the date the Secretary publishes a Notice of Allocation Availability (NOAA) in the **Federal Register**;

(*2*) The designation of the equity investment as a qualified equity investment is made for a credit allocation received pursuant to an allocation application submitted to the Secretary under that NOAA; and

(*3*) The equity investment otherwise satisfies the requirements of section 45D and this section.

(iii) *Failure to receive allocation.* For purposes of paragraph (c)(3)(ii)(A) of this section, if the entity in which the equity investment is made does not receive an allocation pursuant to an allocation application submitted no later than August 29, 2002, the equity investment will not be eligible to be designated as a qualified equity investment. For purposes of paragraph (c)(3)(ii)(B) of this section, if the entity

in which the equity investment is made does not receive an allocation under the NOAA described in paragraph (c)(3)(ii)(B)(*1*) of this section, the equity investment will not be eligible to be designated as a qualified equity investment.

(iv) *Initial investment date.* If an equity investment is designated as a qualified equity investment in accordance with paragraph (c)(3)(ii) of this section, the investment is treated as initially made on the effective date of the allocation agreement between the CDE and the Secretary.

(4) *Limitations*—(i) *In general.* The term *qualified equity investment* does not include—

(A) Any equity investment issued by a CDE more than 5 years after the date the CDE enters into an allocation agreement (as defined in paragraph (c)(3)(i) of this section) with the Secretary; and

(B) Any equity investment by a CDE in another CDE, if the CDE making the investment has received an allocation under section 45D(f)(2).

(ii) *Allocation limitation.* The maximum amount of equity investments issued by a CDE that may be designated under paragraph (c)(1)(iii) of this section by the CDE may not exceed the portion of the limitation amount allocated to the CDE by the Secretary under section 45D(f)(2).

(5) *Substantially all*—(i) *In general.* Except as provided in paragraph (c)(5)(v) of this section, the term *substantially all* means at least 85 percent. The substantially-all requirement must be satisfied for each annual period in the 7-year credit period using either the direct-tracing calculation under paragraph (c)(5)(ii) of this section, or the safe harbor calculation under paragraph (c)(5)(iii) of this section. For the first annual period, the substantially-all requirement is treated as satisfied if either the direct-tracing calculation under paragraph (c)(5)(ii) of this section, or the safe-harbor calculation under paragraph (c)(5)(iii) of this section, is performed on a single testing date and the result of the calculation is at least 85 percent. For each annual period other than the first annual period, the substantially-all requirement is treated as satisfied if either the direct-tracing calculation under paragraph (c)(5)(ii) of this section, or the safe harbor calculation under paragraph (c)(5)(iii) of this section, is performed every six months and the average of the two calculations for the annual period is at least 85 percent. For example, the CDE may choose the same two testing dates for all qualified equity investments regardless of the date each qualified equity investment was initially made under paragraph (b)(2)(i) of this section, provided the testing dates are six months apart. The use of the direct-tracing calculation under paragraph (c)(5)(ii) of this section (or the safe harbor calculation under paragraph (c)(5)(iii) of this section) for an annual period does not preclude the use of the safe harbor calculation under paragraph (c)(5)(iii) of this section (or the direct-tracing calculation under paragraph (c)(5)(ii) of this section) for another annual period, provided that a CDE that switches to a direct-tracing calculation must substantiate that the taxpayer's investment is directly traceable to qualified low-income community investments from the time of the CDE's initial investment in a qualified low-income community investment. For purposes of this paragraph (c)(5)(i), the *7-year credit period* means the period of 7 years beginning on the date the qualified equity investment is initially made. See paragraph (c)(6) of this section for circumstances in which a CDE may treat more than one equity investment as a single qualified equity investment.

(ii) *Direct-tracing calculation.* The substantially-all requirement is satisfied if at least 85 percent of the taxpayer's investment is directly traceable to qualified low-income community investments as defined in paragraph (d)(1) of this section. The direct-tracing calculation is a fraction the numerator of which is the CDE's aggregate cost basis determined under section 1012 in all of the qualified low-income community investments that are directly traceable to the taxpayer's cash investment, and the denominator of which is the amount of the taxpayer's cash investment under paragraph (b)(4) of this section. For purposes of this paragraph (c)(5)(ii), cost basis includes the cost basis of any qualified low-income community investment that becomes worthless. *See* paragraph (d)(2) of this section for the treatment of amounts received by a CDE in payment of, or for, capital, equity or principal with respect to a qualified low-income community investment.

(iii) *Safe harbor calculation.* The substantially-all requirement is satisfied if at least 85 percent of the aggregate gross assets of the CDE are invested in qualified low-income community investments as defined in paragraph (d)(1) of this section. The safe harbor calculation is a fraction the numerator of which is the CDE's aggregate cost basis determined under section 1012 in all of its qualified low-income community investments, and the denominator of which is the CDE's aggregate cost basis determined under section 1012 in all of its assets. For purposes of this paragraph (c)(5)(iii), cost basis includes the cost basis of any qualified low-income community investment that becomes worthless. *See* paragraph (d)(2) of this section for the treatment of amounts received by a CDE in payment of, or for, capital, equity or principal with respect to a qualified low-income community investment.

(iv) *Time limit for making investments.* The taxpayer's cash investment received by a CDE is treated as invested in a qualified low-income community investment as defined in paragraph (d)(1) of this section only to the extent that the cash is so invested within the 12-month period beginning on the date the cash is paid by the taxpayer (directly or through an underwriter) to the CDE.

(v) *Reduced substantially-all percentage.* For purposes of the substantially-all requirement (including the direct-tracing calculation under paragraph (c)(5)(ii) of this section and the safe harbor calculation under paragraph (c)(5)(iii) of this section), 85 percent is reduced to 75 percent for the seventh year of the 7-year credit period (as defined in paragraph (c)(5)(i) of this section).

(vi) *Examples.* The following examples illustrate an application of this paragraph (c)(5):

Example 1. X is a partnership and a CDE that has received a $1 million new markets tax credit allocation from the Secretary. On September 1, 2004, X uses a line of credit from a bank to fund a $1 million loan to Y. The loan is a qualified low-income community investment under paragraph (d)(1) of this section. On September 5, 2004, A pays $1 million to acquire a capital interest in X. X uses the proceeds of A's equity investment to pay off the $1 million line of credit that was used to fund the loan to Y. X's aggregate gross assets consist of the $1 million loan to Y and $100,000 in other assets. A's equity investment in X does not satisfy the substantially-all requirement under paragraph (c)(5)(i) of this section using the direct-tracing calculation under paragraph (c)(5)(ii) of this section because the cash from A's equity investment is not used to make X's loan to Y. However, A's equity investment in X satisfies the substantially-all requirement using the safe harbor calculation under paragraph (c)(5)(iii) of this section because at least 85 percent of X's aggregate gross assets are invested in qualified low-income community investments.

Example 2. X is a partnership and a CDE that has received a new markets tax credit allocation from the Secretary. On August 1, 2004, A pays $100,000 for a capital interest in X. On August 5, 2004, X uses the proceeds of A's equity investment to make an equity investment in Y. X controls Y within the meaning of paragraph (d)(6)(ii)(B) of this section. For the annual period ending July

31, 2005, Y is a qualified active low-income community business (as defined in paragraph (d)(4) of this section). Thus, for that period, A's equity investment satisfies the substantially-all requirement under paragraph (c)(5)(i) of this section using the direct-tracing calculation under paragraph (c)(5)(ii) of this section. For the annual period ending July 31, 2006, Y no longer is a qualified active low-income community business. Thus, for that period, A's equity investment does not satisfy the substantially-all requirement using the direct-tracing calculation. However, during the entire annual period ending July 31, 2006, X's remaining assets are invested in qualified low-income community investments with an aggregate cost basis of $900,000. Consequently, for the annual period ending July 31, 2006, at least 85 percent of X's aggregate gross assets are invested in qualified low-income community investments. Thus, for the annual period ending July 31, 2006, A's equity investment satisfies the substantially-all requirement using the safe harbor calculation under paragraph (c)(5)(iii) of this section.

Example 3. X is a partnership and a CDE that has received a new markets tax credit allocation from the Secretary. On August 1, 2004, A and B each pay $100,000 for a capital interest in X. X does not treat A's and B's equity investments as one qualified equity investment under paragraph (c)(6) of this section. On September 1, 2004, X uses the proceeds of A's equity investment to make an equity investment in Y and X uses the proceeds of B's equity investment to make an equity investment in Z. X has no assets other than its investments in Y and Z. X controls Y and Z within the meaning of paragraph (d)(6)(ii)(B) of this section. For the annual period ending July 31, 2005, Y and Z are qualified active low-income community businesses (as defined in paragraph (d)(4) of this section). Thus, for the annual period ending July 31, 2005, A's and B's equity investments satisfy the substantially-all requirement under paragraph (c)(5)(i) of this section using either the direct-tracing calculation under paragraph (c)(5)(ii) of this section or the safe harbor calculation under paragraph (c)(5)(iii) of this section. For the annual period ending July 31, 2006, Y, but not Z, is a qualified active low-income community business. Thus, for the annual period ending July 31, 2006—

(1) X does not satisfy the substantially-all requirement using the safe harbor calculation under paragraph (c)(5)(iii) of this section;

(2) A's equity investment satisfies the substantially-all requirement using the direct-tracing calculation because A's equity investment is directly traceable to Y; and

(3) B's equity investment does not satisfy the substantially-all requirement because B's equity investment is traceable to Z.

Example 4. X is a partnership and a CDE that has received a new markets tax credit allocation from the Secretary. On November 1, 2004, A pays $100,000 for a capital interest in X. On December 1, 2004, B pays $100,000 for a capital interest in X. On December 31, 2004, X uses $85,000 from A's equity investment and $85,000 from B's equity investment to make a $170,000 equity investment in Y, a qualified active low-income community business (as defined in paragraph (d)(4) of this section). X has no assets other than its investment in Y. X determines whether A's and B's equity investments satisfy the substantially-all requirement under paragraph (c)(5)(i) of this section on December 31, 2004. The calculation for A's and B's equity investments is 85 percent using either the direct-tracing calculation under paragraph (c)(5)(ii) of this section or the safe harbor calculation under paragraph (c)(5)(iii) of this section. Therefore, for the annual periods ending October 31, 2005, and November 30, 2005, A's and B's equity investments, respectively, satisfy the substantially-all requirement under paragraph (c)(5)(i) of this section. For the subsequent annual period, X performs its calculations on December 31, 2005, and June 30, 2006. The average of the two calculations on December 31, 2005, and June 30, 2006, is 85 percent using either the direct-tracing calculation under paragraph (c)(5)(ii) of this section or the safe harbor calculation under paragraph (c)(5)(iii) of this section. Therefore, for the annual periods ending October 31, 2006, and November 30, 2006, A's and B's equity investments, respectively, satisfy the substantially-all requirement under paragraph (c)(5)(i) of this section.

(6) *Aggregation of equity investments.* A CDE may treat any qualified equity investments issued on the same day as one qualified equity investment. If a CDE aggregates equity investments under this paragraph (c)(6), the rules in this section shall be construed in a manner consistent with that treatment.

(7) *Subsequent purchasers.* A qualified equity investment includes any equity investment that would (but for paragraph (c)(1)(i) of this section) be a qualified equity investment in the hands of the taxpayer if the investment was a qualified equity investment in the hands of a prior holder.

(d) *Qualified low-income community investments*—(1) *In general.* The term *qualified low-income community investment* means any of the following:

(i) *Investment in a qualified active low-income community business.* Any capital or equity investment in, or loan to, any qualified active low-income community business (as defined in paragraph (d)(4) of this section).

(ii) *Purchase of certain loans from CDEs*—(A) *In general.* The purchase by a CDE (the ultimate CDE) from another CDE (whether or not that CDE has received an allocation from the Secretary under section 45D(f)(2)) of any loan made by such entity that is a qualified low-income community investment. A loan purchased by the ultimate CDE from another CDE is a qualified low-income community investment if it qualifies as a qualified low-income community investment either—

(*1*) At the time the loan was made; or

(*2*) At the time the ultimate CDE purchases the loan.

(B) *Certain loans made before CDE certification.* For purposes of paragraph (d)(1)(ii)(A) of this section, a loan by an entity is treated as made by a CDE, notwithstanding that the entity was not a CDE at the time it made the loan, if the entity is a CDE at the time it sells the loan.

(C) *Intermediary CDEs.* For purposes of paragraph (d)(1)(ii)(A) of this section, the purchase of a loan by the ultimate CDE from a CDE that did not make the loan (the second CDE) is treated as a purchase of the loan by the ultimate CDE from the CDE that made the loan (the originating CDE) if—

(*1*) The second CDE purchased the loan from the originating CDE (or from another CDE); and

(*2*) Each entity that sold the loan was a CDE at the time it sold the loan.

(D) *Examples.* The following examples illustrate an application of this paragraph (d)(1)(ii):

Example 1. X is a partnership and a CDE that has received a new markets tax credit allocation from the Secretary. Y, a corporation, made a $500,000 loan to Z in 1999. In January of 2004, Y is certified as a CDE. On September 1, 2004, X purchases the loan from Y. At the time X purchases the loan, Z is a qualified active low-income community business under paragraph (d)(4)(i) of this section. Accordingly, the loan purchased by X from Y is a qualified low-income community investment under paragraphs (d)(1)(ii)(A) and (B) of this section.

Example 2. The facts are the same as in *Example 1* except that on February 1, 2004, Y sells the loan to W and on September 1, 2004, W sells the loan to X. W is a CDE. Under paragraph (d)(1)(ii)(C) of this section, X's purchase of the loan from W is treated as the purchase of the loan from Y. Accordingly, the loan purchased by X from W is a qualified low-income community investment under paragraphs (d)(1)(ii)(A) and (C) of this section.

Example 3. The facts are the same as in *Example 2* except that W is not a CDE. Because W was not a CDE at the time it sold the loan to X, the purchase of the loan by X from W is not a qualified low-income community investment under paragraphs (d)(1)(ii)(A) and (C) of this section.

(iii) *Financial counseling and other services.* Financial counseling and other services (as defined in paragraph (d)(7) of this section) provided to any qualified active low-income community business, or to any residents of a low-income community (as defined in section 45D(e)).

(iv) *Investments in other CDEs*—(A) *In general.* Any equity investment in, or loan to, any CDE (the second CDE) by a CDE (the primary CDE), but only to the

extent that the second CDE uses the proceeds of the investment or loan—

(*1*) In a manner—

(*i*) That is described in paragraph (d)(1)(i) or (iii) of this section; and

(*ii*) That would constitute a qualified low-income community investment if it were made directly by the primary CDE;

(*2*) To make an equity investment in, or loan to, a third CDE that uses such proceeds in a manner described in paragraph (d)(1)(iv)(A)(*1*) of this section; or

(*3*) To make an equity investment in, or loan to, a third CDE that uses such proceeds to make an equity investment in, or loan to, a fourth CDE that uses such proceeds in a manner described in paragraph (d)(1)(iv)(A)(*1*) of this section.

(B) *Examples.* The following examples illustrate an application of paragraph (d)(1)(iv)(A) of this section:

Example 1. X is a partnership and a CDE that has received a new markets tax credit allocation from the Secretary. On September 1, 2004, X uses $975,000 to make an equity investment in Y. Y is a corporation and a CDE. On October 1, 2004, Y uses $950,000 from X's equity investment to make a loan to Z. Z is a qualified active low-income community business under paragraph (d)(4)(i) of this section. Of X's equity investment in Y, $950,000 is a qualified low-income community investment under paragraph (d)(1)(iv)(A)(*1*) of this section.

Example 2. W is a partnership and a CDE that has received a new markets tax credit allocation from the Secretary. On September 1, 2004, W uses $975,000 to make an equity investment in X. On October 1, 2004, X uses $950,000 from W's equity investment to make an equity investment in Y. X and Y are corporations and CDEs. On October 5, 2004, Y uses $925,000 from X's equity investment to make a loan to Z. Z is a qualified active low-income community business under paragraph (d)(4)(i) of this section. Of W's equity investment in X, $925,000 is a qualified low-income community investment under paragraph (d)(1)(iv)(A)(*2*) of this section because X uses proceeds of W's equity investment to make an equity investment in Y, which uses $925,000 of the proceeds in a manner described in paragraph (d)(1)(iv)(A)(*1*) of this section.

Example 3. U is a partnership and a CDE that has received a new markets tax credit allocation from the Secretary. On September 1, 2004, U uses $975,000 to make an equity investment in V. On October 1, 2004, V uses $950,000 from U's equity investment to make an equity investment in W. On October 5, 2004, W uses $925,000 from V's equity investment to make an equity investment in X. On November 1, 2004, X uses $900,000 from W's equity investment to make an equity investment in Y. V, W, X, and Y are corporations and CDEs. On November 5, 2004, Y uses $875,000 from X's equity investment to make a loan to Z. Z is a qualified active low-income community business under paragraph (d)(4)(i) of this section. U's equity investment in V is not a qualified low-income community investment because X does not use proceeds of W's equity investment in a manner described in paragraph (d)(1)(iv)(A)(*1*) of this section.

(2) *Payments of, or for, capital, equity or principal*—(i) *In general.* Except as otherwise provided in this paragraph (d)(2), amounts received by a CDE in payment of, or for, capital, equity or principal with respect to a qualified low-income community investment must be reinvested by the CDE in a qualified low-income community investment no later than 12 months from the date of receipt to be treated as continuously invested in a qualified low-income community investment. If the amounts received by the CDE are equal to or greater than the cost basis of the original qualified low-income community investment (or applicable portion thereof), and the CDE reinvests, in accordance with this paragraph (d)(2)(i), an amount at least equal to such original cost basis, then an amount equal to such original cost basis will be treated as continuously invested in a qualified low-income community investment. In addition, if the amounts received by the CDE are equal to or greater than the cost basis of the original qualified low-income community investment (or applicable portion thereof), and the CDE reinvests, in accordance with this paragraph (d)(2)(i), an amount less than such original cost basis, then only the amount so reinvested will be treated as continuously invested in a qualified low-income community investment. If the amounts received by the CDE are less than the cost basis of the original qualified low-income community investment (or applicable portion thereof), and the CDE reinvests an amount in accordance with this paragraph (d)(2)(i), then the amount treated as continuously invested in a qualified low-income community investment will equal the excess (if any) of such original cost basis over the amounts received by the CDE that are not so reinvested. Amounts received by a CDE in payment of, or for, capital, equity or principal with respect to a qualified low-income community investment during the seventh year of the 7-year credit period (as defined in paragraph (c)(5)(i) of this section) do not have to be reinvested by the CDE in a qualified low-income community investment in order to be treated as continuously invested in a qualified low-income community investment.

(ii) *Subsequent reinvestments.* In applying paragraph (d)(2)(i) of this section to subsequent reinvestments, the original cost basis is reduced by the amount (if any) by which the original cost basis exceeds the amount determined to be continuously invested in a qualified low-income community investment.

(iii) *Special rule for loans.* Periodic amounts received during a calendar year as repayment of principal on a loan that is a qualified low-income community investment are treated as continuously invested in a qualified low-income community investment if the amounts are reinvested in another qualified low-income community investment by the end of the following calendar year.

(iv) *Example.* The application of paragraphs (d)(2)(i) and (ii) of this section is illustrated by the following example:

Example. On April 1, 2003, A, B, and C each pay $100,000 to acquire a capital interest in X, a partnership. X is a CDE that has received a new markets tax credit allocation from the Secretary. X treats the 3 partnership interests as one qualified equity investment under paragraph (c)(6) of this section. In August 2003, X uses the $300,000 to make a qualified low-income community investment under paragraph (d)(1) of this section. In August 2005, the qualified low-income community investment is redeemed for $250,000. In February 2006, X reinvests $230,000 of the $250,000 in a second qualified low-income community investment and uses the remaining $20,000 for operating expenses. Under paragraph (d)(2)(i) of this section, $280,000 of the proceeds of the qualified equity investment is treated as continuously invested in a qualified low-income community investment. In December 2008, X sells the second qualified low-income community investment and receives $400,000. In March 2009, X reinvests $320,000 of the $400,000 in a third qualified low-income community investment. Under paragraphs (d)(2)(i) and (ii) of this section, $280,000 of the proceeds of the qualified equity investment is treated as continuously invested in a qualified low-income community investment ($40,000 is treated as invested in another qualified low-income community investment in March 2009).

(3) *Special rule for reserves.* Reserves (not in excess of 5 percent of the taxpayer's cash investment under paragraph (b)(4) of this section) maintained by the CDE for loan losses or for additional investments in existing qualified low-income community investments are treated as invested in a qualified low-income community investment under paragraph (d)(1) of this section. Reserves include fees paid to third parties to protect against loss of all or a portion of the principal of, or interest on, a loan that is a qualified low-income community investment.

(4) *Qualified active low-income community business*—(i) *In general.* The term *qualified active low-income community business* means, with respect to any taxable year, a

corporation (including a nonprofit corporation) or a partnership engaged in the active conduct of a qualified business (as defined in paragraph (d)(5) of this section), if the requirements in paragraphs (d)(4)(i)(A), (B), (C), (D), and (E) of this section are met. Solely for purposes of this section, a nonprofit corporation will be deemed to be engaged in the active conduct of a trade or business if it is engaged in an activity that furthers its purpose as a nonprofit corporation.

(A) *Gross-income requirement.* At least 50 percent of the total gross income of such entity is derived from the active conduct of a qualified business (as defined in paragraph (d)(5) of this section) within any low-income community (as defined in section 45D(e)). An entity is deemed to satisfy this paragraph (d)(4)(i)(A) if the entity meets the requirements of either paragraph (d)(4)(i)(B) or (C) of this section, if ''50 percent'' is applied instead of *40 percent.* In addition, an entity may satisfy this paragraph (d)(4)(i)(A) based on all the facts and circumstances. See paragraph (d)(4)(iv) of this section for certain circumstances in which an entity will be treated as engaged in the active conduct of a trade or business.

(B) *Use of tangible property*—(*1*) *In general.* At least 40 percent of the use of the tangible property of such entity (whether owned or leased) is within any low-income community. This percentage is determined based on a fraction the numerator of which is the average value of the tangible property owned or leased by the entity and used by the entity during the taxable year in a low-income community and the denominator of which is the average value of the tangible property owned or leased by the entity and used by the entity during the taxable year. Property owned by the entity is valued at its cost basis as determined under section 1012. Property leased by the entity is valued at a reasonable amount established by the entity.

(*2*) *Example.* The application of paragraph (d)(4)(i)(B)(*1*) of this section is illustrated by the following example:

Example. X is a corporation engaged in the business of moving and hauling scrap metal. X operates its business from a building and an adjoining parking lot that X owns. The building and the parking lot are located in a low-income community (as defined in section 45D(e)). X's cost basis under section 1012 for the building and parking lot is $200,000. During the taxable year, X operates its business 10 hours a day, 6 days a week. X owns and uses 40 trucks in its business, which, on average, are used 6 hours a day outside a low-income community and 4 hours a day inside a low-income community (including time in the parking lot). The cost basis under section 1012 of each truck is $25,000. During non-business hours, the trucks are parked in the lot. Only X's 10-hour business days are used in calculating the use of tangible property percentage under paragraph (d)(4)(i)(B)(*1*) of this section. Thus, the numerator of the tangible property calculation is $600,000 (4/10 of $1,000,000 (the $25,000 cost basis of each truck times 40 trucks) plus $200,000 (the cost basis of the building and parking lot)) and the denominator is $1,200,000 (the total cost basis of the trucks, building, and parking lot), resulting in 50 percent of the use of X's tangible property being within a low-income community. Consequently, X satisfies the 40 percent use of tangible property test under paragraph (d)(4)(i)(B)(*1*) of this section.

(C) *Services performed.* At least 40 percent of the services performed for such entity by its employees are performed in a low-income community. This percentage is determined based on a fraction the numerator of which is the total amount paid by the entity for employee services performed in a low-income community during the taxable year and the denominator of which is the total amount paid by the entity for employee services during the taxable year. If the entity has no employees, the entity is deemed to satisfy this paragraph (d)(4)(i)(C), and paragraph (d)(4)(i)(A) of this section, if the entity meets the requirement of paragraph (d)(4)(i)(B) of this section if ''85 percent'' is applied instead of *40 percent.*

(D) *Collectibles.* Less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to collectibles (as defined in section 408(m)(2)) other than collectibles that are held primarily for sale to customers in the ordinary course of business.

(E) *Nonqualified financial property*—(*1*) *In general.* Less than 5 percent of the average of the aggregate unadjusted bases of the property of such entity is attributable to *nonqualified financial property.* For purposes the preceding sentence, the term *nonqualified financial property* means debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities, and other similar property except that such term does not include—

(*i*) Reasonable amounts of working capital held in cash, cash equivalents, or debt instruments with a term of 18 months or less (because the definition of *nonqualified financial property* includes debt instruments with a term in excess of 18 months, banks, credit unions, and other financial institutions are generally excluded from the definition of a *qualified active low-income community business*); or

(*ii*) Debt instruments described in section 1221(a)(4).

(*2*) *Construction of real property.* For purposes of paragraph (d)(4)(i)(E)(*1*)(*i*) of this section, the proceeds of a capital or equity investment or loan by a CDE that will be expended for construction of real property within 12 months after the date the investment or loan is made are treated as a reasonable amount of working capital.

(ii) *Proprietorships.* Any business carried on by an individual as a proprietor is a qualified active low-income community business if the business would meet the requirements of paragraph (d)(4)(i) of this section if the business were incorporated.

(iii) *Portions of business*—(A) *In general.* A CDE may treat any trade or business (or portion thereof) as a qualified active low-income community business if the trade or business (or portion thereof) would meet the requirements of paragraph (d)(4)(i) of this section if the trade or business (or portion thereof) were separately incorporated and a complete and separate set of books and records is maintained for that trade or business (or portion thereof). However, the CDE's capital or equity investment or loan is not a qualified low-income community investment under paragraph (d)(1)(i) of this section to the extent the proceeds of the investment or loan are not used for the trade or business (or portion thereof) that is treated as a qualified active low-income community business under this paragraph (d)(4)(iii)(A).

(B) *Examples.* The following examples illustrate an application of paragraph (d)(4)(iii) of this section:

Example 1. X is a partnership and a CDE that receives a new markets tax credit allocation from the Secretary. A pays $1 million for a capital interest in X. Z is a corporation that operates a supermarket that is not in a low-income community (as defined in section 45D(e)). X uses the proceeds of A's equity investment to make a loan to Z that Z will use to construct a new supermarket in a low-income community. Z will maintain a complete and separate set of books and records for the new supermarket. The proceeds of X's loan to Z will be used exclusively for the new supermarket. Assume that Z's new supermarket in the low-income community would meet the requirements to be a qualified active low-income community business under paragraph (d)(4)(i) of this section if it were separately incorporated. Pursuant to paragraph (d)(4)(iii)(A) of this section, X treats Z's new supermarket as the qualified active low-income community business. Accordingly, X's loan to Z is a qualified low-income community investment under paragraph (d)(1)(i) of this section.

Example 2. X is a partnership and a CDE that receives a new markets tax credit allocation from the Secretary. A pays $1 million for a capital interest in X. Z is a corporation that operates a liquor store in a low-income community (as defined in section 45D(e)). A liquor store is not a qualified business under paragraph (d)(5)(iii)(B) of this section. X uses the proceeds of A's equity investment to make a loan to Z that Z will use to construct a restaurant next to the liquor store. Z will maintain a complete and separate set of books and records for the new restaurant. The proceeds of X's loan to Z will be used exclusively for the new restaurant. Assume that Z's restaurant would meet the requirements to be a qualified active low-income community business under paragraph (d)(4)(i) of this section if it were separately incorporated. Pursuant to paragraph (d)(4)(iii) of this section, X treats Z's restaurant as the qualified active low-income community business. Accordingly, X's loan to Z is a qualified low-income community investment under paragraph (d)(1)(i) of this section.

Example 3. X is a partnership and a CDE that receives a new markets tax credit allocation from the Secretary. A pays $1 million for a capital interest in X. Z is a corporation that operates an insurance company in a low-income community (as defined in section 45D(e)). Five percent or more of the average of the aggregate unadjusted bases of Z's property is attributable to nonqualified financial property under paragraph (d)(4)(i)(E) of this section. Z's insurance operations include different operating units including a claims processing unit. X uses the proceeds of A's equity investment to make a loan to Z for use in Z's claims processing operations. Z will maintain a complete and separate set of books and records for the claims processing unit. The proceeds of X's loan to Z will be used exclusively for the claims processing unit. Assume that Z's claims processing unit would meet the requirements to be a qualified active low-income community business under paragraph (d)(4)(i) of this section if it were separately incorporated. Pursuant to paragraph (d)(4)(iii) of this section, X treats Z's claims processing unit as the qualified active low-income community business. Accordingly, X's loan to Z is a qualified low-income community investment under paragraph (d)(1)(i) of this section.

(iv) *Active conduct of a trade or business*—(A) *Special rule.* For purposes of paragraph (d)(4)(i) of this section, an entity will be treated as engaged in the active conduct of a trade or business if, at the time the CDE makes a capital or equity investment in, or loan to, the entity, the CDE reasonably expects that the entity will generate revenues (or, in the case of a nonprofit corporation, engage in an activity that furthers its purpose as a nonprofit corporation) within 3 years after the date the investment or loan is made.

(B) *Example.* The application of paragraph (d)(4)(iv)(A) of this section is illustrated by the following example:

Example. X is a partnership and a CDE that receives a new markets tax credit allocation from the Secretary on July 1, 2004. X makes a ten-year loan to Y. Y is a newly formed entity that will own and operate a shopping center to be constructed in a low-income community. Y has no revenues but X reasonably expects that Y will generate revenues beginning in December 2005. Under paragraph (d)(4)(iv)(A) of this section, Y is treated as engaged in the active conduct of a trade or business for purposes of paragraph (d)(4)(i) of this section.

(5) *Qualified business*—(i) *In general.* Except as otherwise provided in this paragraph (d)(5), the term *qualified business* means any trade or business. There is no requirement that employees of a qualified business be residents of a low-income community.

(ii) *Rental of real property.* The rental to others of real property located in any low-income community (as defined in section 45D(e)) is a *qualified business* if and only if the property is not residential rental property (as defined in section 168(e)(2)(A)) and there are *substantial improvements* located on the real property. For purposes of the preceding sentence, the term *substantial improvements* means improvements the cost basis of which equals or exceeds 50 percent of the cost basis of the land on which the improvements are located and the costs of which are incurred after the date the CDE makes the investment or loan. However, a CDE's investment in or loan to a business engaged in the rental of real property is not a qualified low-income community investment under paragraph (d)(1)(i) of this section to the extent any lessee of the real property is not a qualified business under this paragraph (d)(5).

(iii) *Exclusions*—(A) *Trades or businesses involving intangibles.* The term *qualified business* does not include any trade or business consisting predominantly of the development or holding of intangibles for sale or license.

(B) *Certain other trades or businesses.* The term *qualified business* does not include any trade or business consisting of the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(C) *Farming.* The term *qualified business* does not include any trade or business the principal activity of which is farming (within the meaning of section 2032A(e)(5)(A) or (B)) if, as of the close of the taxable year of the taxpayer conducting such trade or business, the sum of the aggregate unadjusted bases (or, if greater, the fair market value) of the assets owned by the taxpayer that are used in such a trade or business, and the aggregate value of the assets leased by the taxpayer that are used in such a trade or business, exceeds $500,000. For purposes of this paragraph (d)(5)(iii)(C), two or more trades or businesses will be treated as a single trade or business under rules similar to the rules of section 52(a) and (b).

(6) *Qualifications*—(i) *In general.* Except as provided in paragraph (d)(6)(ii) of this section, an entity is treated as a qualified active low-income community business for the duration of the CDE's investment in the entity if the CDE reasonably expects, at the time the CDE makes the capital or equity investment in, or loan to, the entity, that the entity will satisfy the requirements to be a qualified active low-income community business under paragraph (d)(4)(i) of this section throughout the entire period of the investment or loan.

(ii) *Control*—(A) *In general.* If a CDE controls or obtains control of an entity at any time during the 7-year credit period (as defined in paragraph (c)(5)(i) of this section), the entity will be treated as a qualified active low-income community business only if the entity satisfies the requirements of paragraph (d)(4)(i) of this section throughout the entire period the CDE controls the entity.

(B) *Definition of control.* Control means, with respect to an entity, direct or indirect ownership (based on value) or control (based on voting or management rights) of more than 50 percent of the entity. For purposes of the preceding sentence, the term *management rights* means the power to influence the management policies or investment decisions of the entity.

(C) *Disregard of control.* For purposes of paragraph (d)(6)(ii)(A) of this section, the acquisition of control of an entity by a CDE is disregarded during the 12-month period following such acquisition of control (the 12-month period) if—

(*1*) The CDE's capital or equity investment in, or loan to, the entity met the requirements of paragraph (d)(6)(i) of this section when initially made;

(*2*) The CDE's acquisition of control of the entity is due to financial difficulties of the entity that were unforeseen at the time the investment or loan described in paragraph (d)(6)(ii)(C)(*1*) of this section was made; and

(*3*) If the acquisition of control occurs before the seventh year of the 7-year

credit period (as defined in paragraph (c)(5)(i) of this section), either—

(*i*) The entity satisfies the requirements of paragraph (d)(4) of this section by the end of the 12-month period; or

(*ii*) The CDE sells or causes to be redeemed the entire amount of the investment or loan described in paragraph (d)(6)(ii)(C)(*1*) of this section and, by the end of the 12-month period, reinvests the amount received in respect of the sale or redemption in a qualified low-income community investment under paragraph (d)(1) of this section. For this purpose, the amount treated as continuously invested in a qualified low-income community investment is determined under paragraphs (d)(2)(i) and (ii) of this section.

(7) *Financial counseling and other services.* The term *financial counseling and other services* means advice provided by the CDE relating to the organization or operation of a trade or business.

(8) *Special rule for certain loans*—(i) *In general.* For purposes of paragraphs (d)(1)(i), (ii), and (iv) of this section, a loan is treated as made by a CDE to the extent the CDE purchases the loan from the originator (whether or not the originator is a CDE) within 30 days after the date the originator makes the loan if, at the time the loan is made, there is a legally enforceable written agreement between the originator and the CDE which—

(A) Requires the CDE to approve the making of the loan either directly or by imposing specific written loan underwriting criteria; and

(B) Requires the CDE to purchase the loan within 30 days after the date the loan is made.

(ii) *Example.* The application of paragraph (d)(8)(i) of this section is illustrated by the following example:

Example. (i) X is a partnership and a CDE that has received a new markets tax credit allocation from the Secretary. On October 1, 2004, Y enters into a legally enforceable written agreement with W. Y and W are corporations but only Y is a CDE. The agreement between Y and W provides that Y will purchase loans (or portions thereof) from W within 30 days after the date the loan is made by W, and that Y will approve the making of the loans.

(ii) On November 1, 2004, W makes a $825,000 loan to Z pursuant to the agreement between Y and W. Z is a qualified active low-income community business under paragraph (d)(4) of this section. On November 15, 2004, Y purchases the loan from W for $840,000. On December 31, 2004, X purchases the loan from Y for $850,000.

(iii) Under paragraph (d)(8)(i) of this section, the loan to Z is treated as made by Y. Y's loan to Z is a qualified low-income community investment under paragraph (d)(1)(i) of this section. Accordingly, under paragraph (d)(1)(ii)(A) of this section, X's purchase of the loan from Y is a qualified low-income community investment in the amount of $850,000.

(e) *Recapture*—(1) *In general.* If, at any time during the 7-year period beginning on the date of the original issue of a qualified equity investment in a CDE, there is a recapture event under paragraph (e)(2) of this section with respect to such investment, then the tax imposed by Chapter 1 of the Internal Revenue Code for the taxable year in which the recapture event occurs is increased by the credit recapture amount under section 45D(g)(2). A recapture event under paragraph (e)(2) of this section requires recapture of credits allowed to the taxpayer who purchased the equity investment from the CDE at its original issue and to all subsequent holders of that investment.

(2) *Recapture event.* There is a recapture event with respect to an equity investment in a CDE if—

(i) The entity ceases to be a CDE;

(ii) The proceeds of the investment cease to be used in a manner that satisfies the substantially-all requirement of paragraph (c)(1)(ii) of this section; or

(iii) The investment is redeemed or otherwise cashed out by the CDE.

(3) *Redemption*—(i) *Equity investment in a C corporation.* For purposes of paragraph (e)(2)(iii) of this section, an equity investment in a CDE that is treated as a C corporation for Federal tax purposes is redeemed when section 302(a) applies to amounts received by the equity holder. An equity investment is treated as cashed out when section 301(c)(2) or section 301(c)(3) applies to amounts received by the equity holder. An equity investment is not treated as cashed out when only section 301(c)(1) applies to amounts received by the equity holder.

(ii) *Equity investment in an S corporation.* For purposes of paragraph (e)(2)(iii) of this section, an equity investment in a CDE that is an S corporation is redeemed when section 302(a) applies to amounts received by the equity holder. An equity investment in an S corporation is treated as cashed out when a distribution to a shareholder described in section 1368(a) exceeds the accumulated adjustments account determined under § 1.1368–2 and any accumulated earnings and profits of the S corporation.

(iii) *Capital interest in a partnership.* In the case of an equity investment that is a capital interest in a CDE that is a partnership for Federal tax purposes, a pro rata cash distribution by the CDE to its partners based on each partner's capital interest in the CDE during the taxable year will not be treated as a redemption for purposes of paragraph (e)(2)(iii) of this section if the distribution does not exceed the CDE's *operating income* for the taxable year. In addition, a non-pro rata *de minimis* cash distribution by a CDE to a partner or partners during the taxable year will not be treated as a redemption. A non-pro rata *de minimis* cash distribution may not exceed the lesser of 5 percent of the CDE's *operating income* for that taxable year or 10 percent of the partner's capital interest in the CDE. For purposes of this paragraph (e)(3)(iii), with respect to any taxable year, *operating income* is the sum of:

(A) The CDE's taxable income as determined under section 703, except that—

(*1*) The items described in section 703(a)(1) shall be aggregated with the non-separately stated tax items of the partnership; and

(*2*) Any gain resulting from the sale of a capital asset under section 1221(a) or section 1231 property shall not be included in taxable income;

(B) Deductions under section 165, but only to the extent the losses were realized from qualified low-income community investments under paragraph (d)(1) of this section;

(C) Deductions under sections 167 and 168, including the additional first-year depreciation under section 168(k);

(D) Start-up expenditures amortized under section 195; and

(E) Organizational expenses amortized under section 709.

(4) *Bankruptcy.* Bankruptcy of a CDE is not a recapture event.

(5) *Waiver of requirement or extension of time*—(i) *In general.* The Commissioner may waive a requirement or extend a deadline if such waiver or extension does not materially frustrate the purposes of section 45D and this section.

(ii) *Manner for requesting a waiver or extension.* A CDE that believes it has good cause for a waiver or an extension may request relief from the Commissioner in a ruling request. The request should set forth all the relevant facts and include a detailed explanation describing the event or events relating to the request for a waiver or an extension. For further information on the application procedure for a ruling, see Rev. Proc. 2005–1 (2005–1 I.R.B. 1) or its successor revenue procedure (see § 601.601(d)(2) of this chapter).

(iii) *Terms and conditions.* The granting of a waiver or an extension to a CDE under this section may require adjustments of the CDE's requirements

under section 45D and this section as may be appropriate.

(6) *Cure period.* If a qualified equity investment fails the substantially-all requirement under paragraph (c)(5)(i) of this section, the failure is not a recapture event under paragraph (e)(2)(ii) of this section if the CDE corrects the failure within 6 months after the date the CDE becomes aware (or reasonably should have become aware) of the failure. Only one correction is permitted for each qualified equity investment during the 7-year credit period under this paragraph (e)(6).

(7) *Example.* The application of this paragraph (e) is illustrated by the following example:

Example. In 2003, A and B acquire separate qualified equity investments in X, a partnership. X is a CDE that has received a new markets tax credit allocation from the Secretary. X uses the proceeds of A's qualified equity investment to make a qualified low-income community investment in Y, and X uses the proceeds of B's qualified equity investment to make a qualified low-income community investment in Z. Y and Z are not CDEs. X controls both Y and Z within the meaning of paragraph (d)(6)(ii)(B) of this section. In 2003, Y and Z are qualified active low-income community businesses. In 2007, Y, but not Z, is a qualified active low-income community business and X does not satisfy the substantially-all requirement using the safe harbor calculation under paragraph (c)(5)(iii) of this section. A's equity investment satisfies the substantially-all requirement of paragraph (c)(1)(ii) of this section using the direct-tracing calculation of paragraph (c)(5)(ii) of this section because A's equity investment is traceable to Y. However, B's equity investment fails the substantially-all requirement using the direct-tracing calculation because B's equity investment is traceable to Z. Therefore, under paragraph (e)(2)(ii) of this section, there is a recapture event for B's equity investment (but not A's equity investment).

(f) *Basis reduction*—(1) *In general.* A taxpayer's basis in a qualified equity investment is reduced by the amount of any new markets tax credit determined under paragraph (b)(1) of this section with respect to the investment. A basis reduction occurs on each credit allowance date under paragraph (b)(2) of this section. This paragraph (f) does not apply for purposes of sections 1202, 1400B, and 1400F.

(2) *Adjustment in basis of interest in partnership or S corporation.* The adjusted basis of either a partner's interest in a partnership, or stock in an S corporation, must be appropriately adjusted to take into account adjustments made under paragraph (f)(1) of this section in the basis of a qualified equity investment held by the partnership or S corporation (as the case may be).

(g) *Other rules*—(1) *Anti-abuse.* If a principal purpose of a transaction or a series of transactions is to achieve a result that is inconsistent with the purposes of section 45D and this section, the Commissioner may treat the transaction or series of transactions as causing a recapture event under paragraph (e)(2) of this section.

(2) *Reporting requirements*—(i) *Notification by CDE to taxpayer*—(A) *Allowance of new markets tax credit.* A CDE must provide notice to any taxpayer who acquires a qualified equity investment in the CDE at its original issue that the equity investment is a qualified equity investment entitling the taxpayer to claim the new markets tax credit. The notice must be provided by the CDE to the taxpayer no later than 60 days after the date the taxpayer makes the investment in the CDE. The notice must contain the amount paid to the CDE for the qualified equity investment at its original issue and the taxpayer identification number of the CDE.

(B) *Recapture event.* If, at any time during the 7-year period beginning on the date of the original issue of a qualified equity investment in a CDE, there is a recapture event under paragraph (e)(2) of this section with respect to such investment, the CDE must provide notice to each holder, including all prior holders, of the investment that a recapture event has occurred. The notice must be provided by the CDE no later than 60 days after the date the CDE becomes aware of the recapture event.

(ii) *CDE reporting requirements to Secretary.* Each CDE must comply with such reporting requirements to the Secretary as the Secretary may prescribe.

(iii) *Manner of claiming new markets tax credit.* A taxpayer may claim the new markets tax credit for each applicable taxable year by completing Form 8874, ''New Markets Credit,'' and by filing Form 8874 with the taxpayer's Federal income tax return.

(iv) *Reporting recapture tax.* If there is a recapture event with respect to a taxpayer's equity investment in a CDE, the taxpayer must include the credit recapture amount under section 45D(g)(2) on the line for recapture taxes on the taxpayer's Federal income tax return for the taxable year in which the recapture event under paragraph (e)(2) of this section occurs (or on the line for total tax, if there is no such line for recapture taxes) and write *NMCR* (new markets credit recapture) next to the entry space.

(3) *Other Federal tax benefits*—(i) *In general.* Except as provided in paragraph (g)(3)(ii) of this section, the availability of Federal tax benefits does not limit the availability of the new markets tax credit. Federal tax benefits that do not limit the availability of the new markets tax credit include, for example:

(A) The rehabilitation credit under section 47;

(B) All deductions under sections 167 and 168, including the additional first-year depreciation under section 168(k), and the expense deduction for certain depreciable property under section 179; and

(C) All tax benefits relating to certain designated areas such as empowerment zones and enterprise communities under sections 1391 through 1397D, the District of Columbia Enterprise Zone under sections 1400 through 1400B, renewal communities under sections 1400E through 1400J, and the New York Liberty Zone under section 1400L.

(ii) *Low-income housing credit.* If a CDE makes a capital or equity investment or a loan with respect to a qualified low-income building under section 42, the investment or loan is not a qualified low-income community investment under paragraph (d)(1) of this section to the extent the building's eligible basis under section 42(d) is financed by the proceeds of the investment or loan.

(4) *Bankruptcy of CDE.* The bankruptcy of a CDE does not preclude a taxpayer from continuing to claim the new markets tax credit on the remaining credit allowance dates under paragraph (b)(2) of this section.

(h) *Effective dates*—(1) *In general.* Except as provided in paragraph (h)(2) of this section, this section applies on or after December 22, 2004, and may be applied by taxpayers before December 22, 2004. The provisions that apply before December 22, 2004, are contained in § 1.45D–1T (see 26 CFR part 1 revised as of April 1, 2003, and April 1, 2004).

(2) *Exception for certain provisions.* Paragraph (d)(5)(ii) of this section as it relates to the definition of the term *substantial improvements* and the requirement that each lessee must be a qualified business applies to qualified low-income community investments made on or after February 22, 2005.

§ 1.45D–1T [Removed]

■ **Par. 3.** Section 1.45D–1T is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 4.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 5.** In § 602.101, paragraph (b) is amended by removing the entry for ''1.45D–1T'' from the table.

■ **Par. 6.** In § 602.101, paragraph (b) is amended by adding an entry to the table in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.45D–1	1545–1765
* * * * *	

Mark E. Mathews,

Deputy Commissioner for Services and Enforcement.

Approved: December 21, 2004.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 04–28325 Filed 12–22–04; 12:38 pm]

BILLING CODE 4830–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 202, 211, and 212

[Docket No. RM 2004–5]

Reconsideration Procedure

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Office is publishing a final rule concerning reconsideration procedures. With a few modifications, this regulation continues procedures adopted by the U.S. Copyright Office in 1995 that permit copyright applicants to request reconsideration of its decisions to refuse registration. This regulation amends those procedures and incorporates them into Copyright Office regulations. Copyright applicants will continue to have two opportunities to seek reconsideration of a Copyright Office decision to refuse registration. A significant modification is that the reconsideration procedures are also made applicable to the Office's refusals to register mask works and vessel hull designs.

EFFECTIVE DATE: January 27, 2005.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Associate General Counsel, or Renee Coe, Senior Attorney at this address: Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024–0400. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On July 13, 2004, the Copyright Office published a notice of proposed rulemaking seeking comment on its proposed revision of parts 202, 211 and 212 of subchapter A of Chapter II, 37 CFR. The purpose of this notice is to announce the final rule.

This regulation establishes procedures for applicants to request that the Copyright Office reconsider refusals to register copyright claims and claims in mask works or vessel hull designs. There are two opportunities for reconsideration of a refusal to register. At the first level of reconsideration, the Examining Division of the Copyright Office reviews its initial decision to refuse registration. At the second level, the Review Board conducts the review of a refusal to register. For administrative reasons, the Copyright Office is making one change in the membership of the Review Board which considers the second request for reconsideration. The Review Board is composed of three members; the first two members are the Register of Copyrights and the General Counsel or their respective designees. The third member will be designated by the Register. This rule also establishes procedures for mailing or hand delivering requests for reconsideration and related documents.

In response to the publication of the proposed rule, the Copyright Office did not receive any comments. Consequently, the Copyright Office is adopting the previously proposed text, as a final rule, with the one administrative change noted above and without substantive change, as follows:

List of Subjects

37 CFR Part 202

Claims, Copyright.

37 CFR Part 211

Freedom of Information.

37 CFR Part 212

Vessels.

Proposed Regulations

■ In consideration of the foregoing, the Copyright Office amends parts 202, 211 and 212 of 37 CFR, chapter II in the manner set forth below:

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

■ 1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 702.

■ 2. Add § 202.5 to read as follows:

§ 202.5 Reconsideration Procedure for Refusals to Register.

(a) *General.* This section prescribes rules pertaining to procedures for administrative review of the Copyright Office's refusal to register a claim to copyright, a mask work, or a vessel hull design upon a finding by the Office that the application for registration does not satisfy the legal requirements of title 17 of the United States Code. If an applicant's initial claim is refused, the applicant is entitled to request that the initial refusal to register be reconsidered.

(b) *First reconsideration.* Upon receiving a written notification from the Examining Division explaining the reasons for a refusal to register, an applicant may request that the Examining Division reconsider its initial decision to refuse registration, subject to the following requirements:

(1) An applicant must request in writing that the Examining Division reconsider its decision. A request for reconsideration must include the reasons the applicant believes registration was improperly refused, including any legal arguments in support of those reasons and any supplementary information. The Examining Division will base its decision on the applicant's written submissions.

(2) The fee set forth in § 201.3(d)(4) of this chapter must accompany the first request for reconsideration.

(3) The first request for reconsideration and the applicable fee must be received by the Copyright Office no later than three months from the date that appears in the Examining Division's written notice of its initial decision to refuse registration. When the ending date for the three-month time period falls on a weekend or a Federal holiday, the ending day of the three-month period shall be extended to the next Federal work day.

(4) If the Examining Division decides to register an applicant's work in response to the first request for reconsideration, it will notify the applicant in writing of the decision and the work will be registered. However, if the Examining Division again refuses to register the work, it will send the

applicant a written notification stating the reasons for refusal within four months of the date on which the first request for reconsideration is received by the Examining Division. When the ending date for the four-month time period falls on a weekend or a Federal holiday, the ending day of the four-month period shall be extended to the next Federal work day. Failure by the Examining Division to send the written notification within the four-month period shall not result in registration of the applicant's work.

(c) *Second reconsideration.* Upon receiving written notification of the Examining Division's decision to refuse registration in response to the first request for reconsideration, an applicant may request that the Review Board reconsider the Examining Division's refusal to register, subject to the following requirements:

(1) An applicant must request in writing that the Review Board reconsider the Examining Division's decision to refuse registration. The second request for reconsideration must include the reasons the applicant believes registration was improperly refused, including any legal arguments in support of those reasons and any supplementary information, and must address the reasons stated by the Examining Division for refusing registration upon first reconsideration. The Board will base its decision on the applicant's written submissions.

(2) The fee set forth in § 201.3(d)(4) of this chapter must accompany the second request for reconsideration.

(3) The second request for reconsideration and the applicable fee must be received in the Copyright Office no later than three months from the date that appears in the Examining Division's written notice of its decision to refuse registration after the first request for reconsideration. When the ending date for the three-month time period falls on a weekend or a Federal holiday, the ending day of the three-month period shall be extended to the next Federal work day.

(4) If the Review Board decides to register an applicant's work in response to a second request for reconsideration, it will notify the applicant in writing of the decision and the work will be registered. If the Review Board upholds the refusal to register the work, it will send the applicant a written notification stating the reasons for refusal.

(d) *Submission of reconsiderations.* (1) All mail, including any that is hand delivered, should be addressed as follows: RECONSIDERATION, Copyright R&P Division, P.O. Box 71380, Washington, DC 20024–1380. If hand delivered by a commercial, non-government courier or messenger, a request for reconsideration must be delivered between 8:30 a.m. and 4 p.m. to: Congressional Courier Acceptance Site, located at Second and D Streets, NE., Washington, DC. If hand delivered by a private party, a request for reconsideration must be delivered between 8:30 a.m. and 5 p.m. to: Room 401 of the James Madison Memorial Building, located at 101 Independence Avenue, SE., Washington, DC.

(2) The first page of the written request must contain the Copyright Office control number and clearly indicate either ''FIRST RECONSIDERATION'' or ''SECOND RECONSIDERATION,'' as appropriate, on the subject line.

(e) *Suspension or wavier of time requirements.* For any particular request for reconsideration, the provisions relating to the time requirements for submitting a request under this section may be suspended or waived, in whole or in part, by the Register of Copyrights upon a showing of good cause. Such suspension or waiver shall apply only to the request at issue and shall not be relevant with respect to any other request for reconsideration from that applicant or any other applicant.

(f) *Composition of the Review Board.* The Review Board shall consist of three members; the first two members are the Register of Copyrights and the General Counsel or their respective designees. The third member will be designated by the Register.

(g) *Final agency action.* A decision by the Review Board in response to a second request for reconsideration constitutes final agency action.

PART 211—MASK WORK PROTECTION

■ 3. The authority citation for part 211 continues to read as follows:

Authority: 17 U.S.C. 702 and 908.

■ 4. Add § 211.7 to read as follows:

§ 211.7 Reconsideration procedure for refusals to register.

The requirements prescribed in § 202.5 of this chapter for reconsideration of refusals to register copyright claims are applicable to requests to reconsider refusals to register mask works under 17 U.S.C. chapter 9, unless otherwise required by this part.

PART 212—PROTECTION OF VESSEL HULL DESIGNS

■ 5. The authority citation for part 212 continues to read as follows:

Authority: 17 U.S.C. chapter 13.

■ 6. Add § 212.7 to read as follows:

§ 212.7 Reconsideration procedure for refusals to register.

The requirements prescribed in § 202.5 of this chapter for reconsideration of refusals to register copyright claims are applicable to requests to reconsider refusals to register vessel hull designs under 17 U.S.C. chapter 13, unless otherwise required by this part.

Dated: December 3, 2004.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

Librarian of Congress.

[FR Doc. 04–28396 Filed 12–27–04; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 22

[FRL–7855–6]

Clarification of Address for Documents Filed With EPA's Environmental Appeals Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending the regulations that pertain to filing appeals and other documents with the Environmental Appeals Board (EAB) under the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (CROP). Specifically, EPA is amending two regulations that specify the addresses where notices of appeal, accompanying briefs, and other documents must be filed, to provide that any filings made through the U.S. mail service must be addressed to the EAB's mailing address, and that any filings made by hand-delivery or courier must be made to the EAB's hand-delivery address. The amendments are intended to make the regulations consistent with current Agency practice and to provide clear guidance on the proper address to use under various circumstances.

EFFECTIVE DATE: This final rule is effective on December 28, 2004.

FOR FURTHER INFORMATION CONTACT: Eurika Durr, Clerk of the Board. Telephone number: (202) 233–0122. E-mail: *Durr.Eurika@epa.gov*.

SUPPLEMENTARY INFORMATION: This action is directed to the public in

general and to anyone who may want to file documents with the EAB. If you have questions regarding the applicability of this action to a particular entity or action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

I. Background

A. What Action Is the Agency Taking?

The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (CROP), 40 CFR part 22, govern the filing of certain appeals with the EAB, and provide, in pertinent part, that:

> [A]ny party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board (Clerk of the Board (Mail Code 1103B), United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Hand deliveries may be made at Suite 600, 1341 G Street, NW.

40 CFR 22.30(a)(l). The regulation could be read as implying that hand deliveries may be made at either of the two specified addresses. However, the address referenced in the regulation as ''1200 Pennsylvania Avenue, NW.'' is that of the EPA mailing center, which no longer accepts hand deliveries of mail addressed to the EAB. The EPA mailing center will reject any document addressed to the EAB that is delivered by hand or courier, and such document will not be properly filed until it has been re-delivered to the physical offices of the EAB at Suite 600, 1341 G Street, NW., Washington, DC 20005. The purpose of the amendment is to delete the regulatory language at 40 CFR 22.30(a)(1) quoted above, and to replace it with the following language:

> [A]ny party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board. Appeals filed through the U.S. Postal Service (except by U.S. Postal Express Mail) shall be addressed to the Environmental Appeals Board at its official mailing address: Clerk of the Board (Mail Code 1103B), United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Appeals delivered by hand or courier (including deliveries by U.S. Postal Express Mail or by a commercial delivery service) shall be delivered to Suite 600, 1341 G Street, NW., Washington, DC 20005.

The CROP further provides, in pertinent part, that:

> The original and one copy of each document intended to be part of the record shall be filed * * * with the Clerk of the Board when the proceeding is before the Environmental Appeals Board. A document is filed when it is received by the appropriate Clerk.

40 CFR 22.5(a)(1). According to 40 CFR 22.3, the Clerk of the Board ''means the Clerk of the Environmental Appeals Board, Mail Code 1103B, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.'' The purpose of the amendment is to amend 40 CFR 22.5(a)(I) by adding the following sentence after the regulatory language quoted above:

> Documents filed in proceedings before the Environmental Appeals Board shall either be sent by U.S. mail (except by U.S. Express Mail) to the official mailing address of the Clerk of the Board set forth at 22.3 or delivered by hand or courier (including deliveries by U.S. Postal Express or by a commercial delivery service) to Suite 600, 1341 G Street, NW., Washington, DC 20005.

B. How Can I Get Additional Information About This Action?

You may obtain additional information about this action on the EAB's Internet home page at *http://www.epa.gov/eab*.

C. What Is the Agency's Authority for Taking This Action?

EPA is issuing this document under its general rulemaking authority. Reorganization Plan No. 3 of 1970 (5 U.S.C. app.). In addition, section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that this amendment is technical and non-substantive, and therefore, that there is good cause under 5 U.S.C. 553(b)(B) for making this rule final without prior proposal and opportunity for comment. EPA also finds good cause under 5 U.S.C. 553(d) to make this rule effective on the date of publication.

II. Do Any of the Regulatory Assessment Requirements Apply to This Action?

No. This final rule implements a technical amendment to 40 CFR part 22 to provide clear guidance on the hand-delivery address for filings with the EAB, and does not otherwise impose or amend any requirements. This action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This rule does not contain any information collection requirements that require review and approval by OMB pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Because this action is not economically significant as defined by section 3(f) of Executive Order 12866, this action is not subject to Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). Since the Agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the APA or any other statute, this action is not subject to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandate Reform Act of 1995 (UMRA) (Public Law 104–94). In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the UMRA of 1995. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999). Similarly, this rule will not have substantial direct effects on tribal governments, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000). This action does not involve any technical standards that require the Agency's 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). This rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001), because this action is not a significant regulatory action under Executive Order 12866.

III. Will EPA Submit This Final Rule to Congress and the Comptroller General?

Yes. The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, generally provides that, before a rule may take effect, the agency that promulgates 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. CRA section 808 provides that the issuing agency may make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. EPA has made such a good cause finding, including the reasons therefor, and has established the date of publication as the effective date. As stated previously, 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 action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 22

Environmental protection, Administrative practice and procedure, Courts.

Dated: December 20, 2004.

Richard McKeown,

Chief of Staff.

■ 40 CFR Part 22 is amended as follows:

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

Authority: 7 U.S.C. 136(l); 15 U.S.C. 2615; 33 U.S.C. 1319, 1342, 1361, 1415 and 1418; 42 U.S.C. 300g–3(g), 6912, 6925, 6928, 6991e and 6992d, 42 U.S.C. 7413(d), 7524(c), 7545(d), 7547, 7601 and 7607(a), 9609, and 11045.

■ 2. Section 22.5 is amended by adding a sentence after the second sentence in paragraph (a)(1) to read as follows:

§ 22.5 Filing, service, and form of all filed documents, business confidentiality claims.

(a) * * *

(1) * * * Documents filed in proceedings before the Environmental Appeals Board shall either be sent by U.S. mail (except by U.S. Express Mail) to the official mailing address of the Clerk of the Board set forth at § 22.3 or delivered by hand or courier (including deliveries by U.S. Postal Express or by a commercial delivery service) to Suite 600, 1341 G Street, NW., Washington, DC 20005. * * *

* * * * *

■ 3. Section 22.30 is amended by removing the first two sentences of paragraph (a)(1) and adding three new sentences in their place to read as follows:

§ 22.30 Appeal from or review of initial decision.

(a) * * *

(1) Within 30 days after the initial decision is served, any party may appeal any adverse order or ruling of the Presiding Officer by filing an original and one copy of a notice of appeal and an accompanying appellate brief with the Environmental Appeals Board. Appeals sent by U.S. mail (except by U.S. Postal Express Mail) shall be addressed to the Environmental Appeals Board at its official mailing address: Clerk of the Board (Mail Code 1103B), United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Appeals delivered by hand or courier (including deliveries by U.S. Postal Express Mail or by a commercial delivery service) shall be delivered to Suite 600, 1341 G Street, NW., Washington, DC 20005. * * *

* * * * *

[FR Doc. 04–28359 Filed 12–27–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2004–DC–0003; FRL–7853–9]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Excess Volatile Organic Compound and Nitrogen Oxides Emissions Fee Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the District of Columbia (District) State Implementation Plan (SIP) for ozone. The rule requires major stationary sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) in the District, which is part of the Metropolitan Washington DC Severe Ozone Nonattainment Area, to pay a fee to the District if the area fails to attain the one-hour national ambient air quality standard for ozone by November 15, 2005. The fee must be paid beginning in 2006, and in each calendar year thereafter, until the area is redesignated to attainment for the pollutant ozone. The District of Columbia submitted this rule on April 16, 2004, pursuant to the requirements of Section 110 of the Clean Air Act.

DATES: This rule is effective on February 28, 2005, without further notice, unless EPA receives adverse written comment by January 27, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2004–DC–0003 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://www.docket.epa.gov/rmepub/RME,* EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *morris.makeba@epa.gov.*

D. Mail: R03–OAR–2004–DC–0003, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2004–DC–0003. 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.docket.epa.gov/rmepub/,* 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME 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.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. 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 RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of material to be incorporated by reference are available at the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, (215) 814–2174, or by e-mail at *magliocchetti.catherine@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' refer to EPA. This supplementary information is organized as follows.

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I. What Final Action Is EPA Taking?
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I. What Final Action Is EPA Taking?

EPA is approving a SIP revision that revises the District of Columbia's ozone SIP. The SIP revision requires major stationary sources of VOC and NO_X in the District of Columbia, which is part of the Metropolitan Washington DC Severe Ozone Nonattainment Area (Area), to pay a fee to the District if the Area fails to attain the national ambient air quality standard (NAAQS) for ozone by November 15, 2005. The fee must be paid beginning in 2006 and in each calendar year thereafter, until the Area is redesignated to attainment for the pollutant ozone. We are approving this rule because it is consistent with the requirements of the Clean Air Act (Act).

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and we anticipate no adverse comment, since no comments were received during the District's regulatory process. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on February 28, 2005, without further notice unless EPA receives adverse comment by January 27, 2005. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

II. Who Has To Pay These Fees?

This rule applies to major stationary VOC and NO_X sources located in the District of Columbia. The District of Columbia's definition of a ''major stationary source'' is found at 20 DCMR section 199.1. In a separate action, EPA is approving this definition as part of the District of Columbia's ozone SIP. Pertaining to the application of this excess emissions fee for entities in the District of Columbia, a major stationary source is defined as ''any stationary source of air pollutants that emits, or has the potential to emit, twenty five (25) tons per year or more of oxide of nitrogen or volatile organic compounds * * *'' These sources are subject to this emissions fee rule.

III. How Are the Fees Calculated?

The fee is initially set at $5,000 per ton of VOC or NO_X emitted by the source during the previous calendar year in excess of 80% of the baseline amount. The fee is to be adjusted annually, beginning in 1991, by the percentage by which the consumer price index has been adjusted. The baseline is the lower of the source's actual or allowable VOC or NO_X emissions during calendar year 2005.

IV. Is the District of Columbia Required To Adopt an Excess Emission Fee Rule?

Under sections 182(d)(3), (e), and 185 of the Clean Air Act (the Act), states are required to adopt an excess emissions fee regulation for ozone nonattainment areas classified as severe or extreme. This regulation requires major stationary sources of VOC in the nonattainment area to pay a fee to the state if the area fails to attain the standard by the attainment date set forth in the Act. The District of Columbia is classified as severe nonattainment area for ozone. Section 182(f) of the Act requires states to apply the same requirements to major stationary sources of oxides of nitrogen (NO_X) as are applied to major stationary sources of VOC.

V. What Are the Exceptions to this Rule?

As per section 185 of the Clean Air Act, the District of Columbia's regulation provides for an exception of the fee during any year that is treated as an extension year under section 181(a)(5) of the Clean Air Act.

VI. What Administrative Requirements Must EPA Consider?

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in

Executive Order 13132 (64 FR 43255, August 10, 1999).

This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

VII. What Congressional Review Act Requirements Must EPA Consider?

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).

VIII. What Are the Requirements for Judicial Review of This Action?

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 28, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This approval of the District of Columbia's Severe Ozone Nonattainment Area Fee SIP revision, as required under section 185 and 182(f) of the Clean Air Act, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 14, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart J—District of Columbia

■ 2. In § 52.470, the table in paragraph (c) is amended by adding the entry for Chapter 3, Section 307, after existing entry Section 8–2:720(c) to read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
District of Columbia (DCMR), Title 20—Environment				
*	*	*	*	*
Chapter 3 Operating Permits				
Section 307	Enforcement for Severe Ozone Nonattainment Areas.	4/01/04	12/28/04 [Insert page number where the document begins]	Provision allowing for the District to collect penalty fees from major stationary sources if the nonattainment area does not attain the ozone standard by the statutory attainment date.
*	*	*	*	*

* * * * *

[FR Doc. 04–28191 Filed 12–27–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2004–DC–0006; FRL–7854–7]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; VOC Emission Standards for Consumer Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the District of Columbia State Implementation Plan (SIP). The revisions pertain to the volatile organic compound (VOC) emission standards for consumer products used or sold in the District of Columbia. EPA is approving these revisions in accordance with the requirements of the Clean Air Act (CAA or the Act).

DATES: This rule is effective on February 28, 2005 without further notice, unless EPA receives adverse written comment by January 27, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2004–DC–0006 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *morris.makeba@epa.gov.*

D. Mail: R03–OAR–2004–DC–0006, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2004–DC–0006. 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.docket.epa.gov/rmepub/*, 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME 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.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. 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 RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION: On April 16, 2004, the District of Columbia (the District) submitted several revisions to its SIP. The SIP revisions include both new regulations and amendments to Title 20 of the District of Columbia Municipal Regulations (20 DCMR). The new regulations in Title 20 DCMR (Environment), Subtitle A: Air Quality, Chapter 7, Volatile Organic Compounds are:

(1) New Section 718—''Mobile Equipment Repair and Refinishing''.

(2) New Sections 719 through 734—''Consumer Products''.

(3) New Sections 735 through 741—''Portable Fuel Containers and Spouts''.

(4) New Sections 742 through 748—''Solvent Cleaning''.

(5) New Sections 749 through 754—''Architectural and Industrial Maintenance Coating''.

The April 16, 2004 submittal also includes new definitions that were added in section 799, a new section 307 to Chapter 3—to provide for a fee penalty pursuant to section 185 of the Act, and amendments to Chapters 1, 2, 6, 7, and 8 to satisfy the Act's requirements for severe ozone nonattainment areas pursuant to the Metropolitan Washington DC 1-hour ozone nonattainment area's reclassification on January 24, 2003 from serious to severe nonattainment.

On September 20, 2004, the District supplemented its April 16, 2004 submittal. This supplemental submittal provides copies of standards that are incorporated by reference in the District's new and amended regulations and a copy of the District's responses to comments it received during its rule adoption process. On November 26, 2004, the District submitted another supplemental revision to its April 16, 2004 submittal. This supplemental submittal consists of revised versions of the new VOC regulations. These are minor revisions to the regulations which clarify the standards that are incorporated by reference and correct cross-referencing and typographical errors. This action concerns only sections 719 through 734 (Consumer Products) and revised section 799 containing the associated definitions for the District's consumer products rule. The remaining SIP revisions submitted on April 16, 2004 and supplemented on September 20, 2004 and November 26, 2004 are the subjects of separate rulemaking actions.

I. Background

As stated previously, this approval pertains only to the District's regulations for consumer products. The standards and requirements contained

in the District's consumer products rule are based on the Ozone Transport Commission (OTC) model rule. The OTC developed control measures into model rules for a number of source categories. The OTC consumer products model rule is based on the existing rules developed by the California Air Resources Board, which were analyzed and modified by the OTC workgroup to address VOC reduction needs in the Ozone Transport Region (OTR).

II. Summary of SIP Revision

The District's consumer products rule (sections 719 through 734) applies to any person who sells, supplies, offers for sale, or manufactures consumer products on or after January 1, 2005 for use in the District. The rule sets specific VOC content limits in percent VOCs by weight for consumer products with a compliance date of January 1, 2005. Exemptions from the VOC content limits are listed in the rule. The rule also contains requirements for the following consumer products: (1) Products requiring dilution, (2) ozone depleting compounds, (3) aerosol adhesives, (4) antiperspirants or deodorants, (5) charcoal lighter materials, and (6) floor wax strippers. Alternative control plans (ACP) are also provided by allowing responsible parties the option to voluntarily enter into separate ACP agreements for the consumer products mentioned above. Criteria for innovative products exemption and requirements for variance requests are listed in the rule. In addition, the rule contains administrative requirements for labeling and reporting as well as test methods for demonstrating compliance. The test methods used to test coatings must be the most current approved method at the time testing is performed.

III. Final Action

EPA is approving revisions to the District of Columbia SIP to establish a regulation for the control of VOC emissions from consumer products. The implementation of this rule will result in the reduction of VOC emissions from consumer products in the District of Columbia. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on February 28, 2005 without further notice unless EPA receives adverse comment by January 27, 2005. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 28, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not

postpone the effectiveness of such rule or action. This action pertaining to the District of Columbia's consumer products rule may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 14, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart J—District of Columbia

■ 2. In Section 52.470, the table in paragraph (c) is amended by adding the following entries to ''District of Columbia Municipal Regulations (DCMR), Title 20—Environment, Chapter 7—Volatile Organic Compounds'':

■ a. Adding entries for Section 719 through Section 734.

■ b. Adding a new entry for Section 799 after the existing entry for Section 799.

The added entries read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE DISTRICT OF COLUMBIA SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
District of Columbia Municipal Regulations (DCMR), Title 20—Environment				
*	*	*	*	*
Chapter 7—Volatile Organic Compounds				
*	*	*	*	*
Section 719	Consumer Products—General Requirements.	04/16/04, 11/26/04	12/28/04 [Insert page number where the document begins].	
Section 720	Consumer Products—VOC Standards.	04/16/04, 11/26/04	12/28/04 [Insert page number where the document begins].	
Section 721	Consumer Products—Exemptions from VOC Standards.	04/16/04, 11/26/04	12/28/04 [Insert page number where the document begins].	
Section 722	Consumer Products—Registered Under FIFRA.	04/16/04, 11/26/04	12/28/04 [Insert page number where the document begins].	
Section 723	Consumer Products—Products Requiring Dilution.	04/16/04, 11/26/04	12/28/04 [Insert page number where the document begins].	
Section 724	Consumer Products— Ozone Depleting Compounds.	04/16/04, 11/26/04	12/28/04 [Insert page number where the document begins].	
Section 725	Consumer Products—Aerosol Adhesives.	04/16/04, 11/26/04	12/28/04 [Insert page number where the document begins].	
Section 726	Consumer Products—Antiperspirants or Deodorants.	04/16/04, 11/26/04	12/28/04 [Insert page number where the document begins].	
Section 727	Consumer Products—Charcoal Lighter Materials.	04/16/04, 11/26/04	12/28/04 [Insert page number where the document begins].	
Section 728	Consumer Products—Floor Wax Strippers.	04/16/04, 11/26/04	12/28/04 [Insert page number where the document begins].	
Section 729	Consumer Products—Labeling of Contents.	04/16/04, 11/26/04	12/28/04 [Insert page number where the document begins].	
Section 730	Consumer Products—Reporting Requirements.	04/16/04, 11/26/04	12/28/04 [Insert page number where the document begins].	
Section 731	Consumer Products—Test Methods.	04/16/04, 11/26/04	12/28/04 [Insert page number where the document begins].	
Section 732	Consumer Products—Alternative Control Plans.	04/16/04, 11/26/04	12/28/04 [Insert page number where the document begins].	
Section 733	Consumer Products—Innovative Products Exemption.	04/16/04, 11/26/04	12/28/04 [Insert page number where the document begins].	

EPA-APPROVED REGULATIONS IN THE DISTRICT OF COLUMBIA SIP—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 734	Consumer Products—Variance Requests.	04/16/04, 11/26/04	12/28/04 [Insert page number where the document begins].	
* * *	*	* *	*	*
Section 799	Definitions	04/16/04, 11/26/04	12/28/04 [Insert page number where the document begins].	
* * *	*	* *	*	*

* * * * *

[FR Doc. 04–28193 Filed 12–27–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME R03–OAR–2004–DC–0002; FRL–7855–1]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Approval of Minor Clarifications to Municipal Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the District of Columbia State Implementation Plan (SIP). The revisions include minor changes to clarify that the allowable emission rates for particulates and nitrogen oxides (NO_X) are expressed in pounds of pollutant per million BTUs (lbs/MMBTUs) of heat input in District of Columbia Municipal Regulations (DCMRs). This action is being taken in accordance with the Clean Air Act (CAA).

DATES: This rule is effective on February 28, 2005 without further notice, unless EPA receives adverse written comment by January 27, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2004–DC–0002 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *Morris.makeba@epa.gov.*

D. Mail: R03–OAR–2004–DC–0002, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2004–DC–0002. 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.docket.epa.gov/rmepub/*, 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME 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.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/.* 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 RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Linda Miller, (215) 814–2068, or by e-mail at *miller.linda@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The District of Columbia submitted SIP revisions on April 16, 2004 pertaining to changes necessary to meet the more stringent requirements of section 182(d) of the CAA and to make certain clarifications. This action pertains to changes made to previously SIP-approved Sections 600.1 and 805.5 of Title 20 of the DCMRs to clarify that the allowable emission rates for particulates and NO_X are expressed in pounds of pollutant per million BTUs (lbs/MMBTUs).

II. Summary of SIP Revision

The April 16, 2004 SIP submittal requested approval of revisions to portions of the regulations in the 20 DCMR Chapters 6 and 8. The federally approved SIP version of these DCMRs correctly prescribes allowable particulate and NO_X emission rates in pounds of pollutant per million BTUs of heat input. However, some confusion has arisen from how these allowable emission rates actually appear in the current SIP version of the regulations. For example, one such limit for particulate emissions is expressed as follows: thirteen hundredths (0.13) pounds per million BTU of heat input. While not incorrect, this has led to the allowable emission rate being abbreviated and then interpreted as 0.13 ppm, which is parts per million, rather than as 0.13lbs/MMBTUs. The revised language clarifies all of the allowable emission rates for particulates and NO_X, respectively, in 20 DCMR Sections 600.1 and 805.5 to avoid this confusion. For example, the clarified version of the previously referenced particulate emission limit now reads as follows: thirteen hundredths pounds (0.13 lb) per million BTU of heat input. By expressing the allowable emission limits in this fashion, they will properly be abbreviated and correctly interpreted in lbs/MMBTUs. These revisions to clarify 20 DCMR Chapters 6 and 8 do not affect the stringency of these previously SIP-approved regulations.

III. Final Action

EPA is approving revisions to Sections 600.1 and 805.5 of 20 DCMR to clarify how the allowable emission rates for particulates and NO_X are expressed. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on February 28, 2005 without further notice unless EPA receives adverse comment by January 27, 2005. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 28, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve minor clarifications to the allowable emissions rates for particulates and NO_X such that they are clearly expressed in pounds of pollutant per million BTUs (lbs/MMBTUs) may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, organic compounds.

Dated: December 14, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart J—District of Columbia

■ 2. In Section 52.470, the table in paragraph (c) is amended by revising the entry for Chapter 6, Section 600 and adding an entry for Chapter 8, Section 805 after the existing entry for Chapter 8, Section 805 to read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) EPA-approved regulations.

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
Chapter 6 Particulates				
Section 600	Fuel-Burning Particulate Emissions	4/16/04	12/28/04 [Insert page number where the document begins].	Revision to paragraph 600.1.
*	*	*	*	*
Chapter 8 Asbestos, Sulfur and Nitrogen Oxides				
*	*	*	*	*
Section 805	Nitrogen Oxides	4/16/04	12/28/04 [Insert page number where the document begins].	Revision to paragraph 805.5(b) and (c)
*	*	*	*	*

[FR Doc. 04–28195 Filed 12–27–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME R03–OAR–2004–DC–0001; FRL–7855–3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Amendments to the Size Thresholds for Defining Major Sources and to the NSR Offset Ratios for Sources of VOC and NOX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the District of Columbia (the District) State Implementation Plan (SIP). The revisions reduce the size thresholds for defining major sources and increase the new source review (NSR) offset ratio requirements for sources of ozone precursors to meet the Clean Air Act (CAA) requirements for 1-hour ozone nonattainment areas classified as severe. These amendments to the District's SIP are required pursuant to the reclassification of the Metropolitan Washington, DC 1-hour ozone nonattainment area from serious to severe. This action is being taken under the CAA.

DATES: This rule is effective on February 28, 2005 without further notice, unless EPA receives adverse written comment by January 27, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2004–DC–0001 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *Morris.makeba@epa.gov.*

D. Mail: R03–OAR–2004–DC–0001, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2004–DC–0001. 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.docket.epa.gov/rmepub/,* 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without

going through RME 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.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/.* 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 RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Linda Miller, (215) 814–2068, or by e-mail at *miller.linda@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 24, 2003 (68 FR 3410), EPA issued a final rule which reclassified the Metropolitan Washington DC 1-hour ozone nonattainment area (the Washington DC area) from serious to severe. This is commonly referred to as ''bumping up'' a 1-hour ozone nonattainment area. Pursuant to EPA's January 24, 2003 reclassification of the Washington DC area to severe, the District was required to adopt and submit SIP revisions to satisfy the more stringent CAA section 182(d) requirements for severe 1-hour ozone nonattainment areas. On April 16, 2004, the District submitted several SIP revisions to satisfy those mandatory severe area requirements. Among those revisions are amendments to the size thresholds for defining major stationary sources of ozone precursors and amendments to the offset ratio requirements for NSR permitting purposes. These revisions are the subject of this rulemaking action. The other revisions submitted on April 16, 2004 are the addressed in separate rulemakings.

II. Summary of SIP Revision

On April 16, 2004 (and supplemented on September 20, 2004), the District submitted SIP revisions to regulations found in Chapters 1, 2, 7 and 8 of Title 20 of the District of Columbia Municipal Regulations (DCMRs). Specifically, the regulations have been revised to meet the more stringent major source definitions and offset ratio requirements for severe ozone nonattainment areas found in CAA 182(d).

Revisions have been made to 20 DCMR Chapter 2, subsection 204.4 which change the NSR offset ratio from 1.2:1 to the more stringent ratio of 1.3:1 required for the NSR permitting of major sources and major modifications of ozone precursors in the District, namely volatile organic compounds (VOCs) and nitrogen oxides (NOX).

Revisions have also been made which change the size thresholds for defining major sources of VOC and NOX to comply with the 25 ton per year size threshold requirements of the CAA for severe 1-hour ozone nonattainment areas. Specifically, 20 DCMR Chapter 1, Subsection 199.1, for permitting requirements, now defines major stationary sources of VOC and NOX as those which emit or have the potential to emit 25 tons per year or more. Title 20 DCMR Chapter 7, Subsections 715.2, 715.3 and 715.4(b), for purposes of requiring reasonably available control technology (RACT), now define major sources of VOC as those which emit, have ever emitted, have the potential to emit, or exceed in the future, emissions greater than or equal to 25 tons per year. Similarly, 20 DCMR Chapter 8, Subsections 805.1 and 805.6 and 805.7; now define major sources of NOX as those which emit or have the potential to emit 25 tons per year or more for applicability of NOX RACT requirements. Additional changes were made to include a January 1, 2005 compliance date for RACT for those sources which emit or have the potential to emit between 25 tons per year (the new threshold for defining a subject major source) and the previous major source applicability level of 50 tons per year.

These changes to the District SIP are necessary to meet the mandatory requirements for severe 1-hour ozone nonattainment areas under section 182(d) of the CAA and strengthen the current SIP.

III. Final Action

EPA is approving revisions to regulations found in 20 DCMR Chapters 1, 2, 7 and 8 submitted by the District to satisfy the more stringent major source definitions and offset ratio requirements for severe ozone nonattainment areas found in CAA 182(d). EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on February 28, 2005 without further notice unless EPA receives adverse comment by January 27, 2005. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

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).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 28, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve revisions to the District of Columbia's regulations pertaining to major source size thresholds and offset ratios to satisfy the requirements for severe 1-hour ozone nonattainment requirements may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, volatile organic compounds.

Dated: December 14, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart J—District of Columbia

■ 2. In Section 52.470, the table in paragraph (c) is amended by revising the existing entries for Chapter 1, Section 199; Chapter 2, Section 204; Chapter 7, Section 715; and Chapter 8, Section 805. The amendments read as follows:

§ 52.470 Identification of plan.

* * * * *

(c) *EPA approved regulations.*

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
Chapter 1 General				
Section 199	Definitions and Abbreviations	4/16/04	12/28/04 [Insert page number where the document begins].	Revised Definition of Major Stationary Source.
*	*	*	*	*
Chapter 2 General and Non-attainment Area Permits				
*	*	*	*	*
Section 204	Requirements for Sources Affecting Nonattainment Areas.	4/16/04	12/28/04 [Insert page number where the document begins].	Revised Paragraph 204.4.

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
Chapter 7 Volatile Organic Compounds				
*	*	*	*	*
Section 715	Reasonably Available Control Technology	4/16/04	12/28/04 [Insert page number where the document begins].	Revised paragraphs 715.2, 715.3, and 715.4(b).
*	*	*	*	*
Chapter 8 Asbestos, Sulfur and Nitrogen Oxides				
*	*	*	*	*
Section 805	Nitrogen Oxides	4/16/04	12/28/04 [Insert page number where the document begins].	Revised paragraphs 805.1 (a), 805.1(a)(3) and (4), 805.1(b) and (c), 805.6 and 805.7.
*	*	*	*	*

[FR Doc. 04–28197 Filed 12–27–04; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7774]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP) and suspended from the NFIP. These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed under the column headed Effective Date of Eligibility.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Mike Grimm, Mitigation Division, 500 C Street, SW.; Room 412, Washington, DC 20472, (202) 646–2878.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 202 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4016(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Administrator finds that delayed effective dates would be contrary to the public interest and that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U. S. C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64.

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles: Emergency Program			
Georgia:			
Glenwood, City of, Wheeler County	130419	Jan. 6, 2004	Apr. 4, 1975 FHBM.
Elbert County, Unincorporated Areas	135264	.....do*	Never Mapped.
Minnesota: Avoca, City of, Murray County	270552	Jan. 20, 2004	Jan. 10, 1975 FHBM.
Indiana: Warren County, Unincorporated Areas	180448	Feb. 25, 2004	Dec. 10, 1978 FHBM.
Texas: Potter County, Unincorporated Areas	481241	.....do	Dec. 6, 1977 FHBM.
North Carolina: Connelly Springs, Town of, Burke County	370600	Mar. 12, 2004	Never Mapped.
Texas: Concho County, Unincorporated Areas	480762	Mar. 14, 2004	Do.
Massachusetts: Tyringham, Town of, Berkshire County	250043	Apr. 1, 2004	Nov. 29, 1974 FHBM.
New Hampshire: Loudon, Town of, Merrimack County	330117	Apr. 2, 2004	Sept. 28, 1979 FHBM.
Arkansas:			
Nevada County, Unincorporated Areas	050454	Apr. 15, 2004	Aug. 9, 1977 FHBM.
Winchester, City of, Drew County	050077	.....do	Oct. 10, 1975 FHBM.
Maine:			
Alna, Town of, Lincoln County	230083	May 6, 2004	Jan. 3, 1975.
Kansas: Onaga, City of, Pottawatomie County	200544	May 13, 2004	Aug. 13, 1976 FHBM.
Maryland: Galestown, Town of, Dorchester County	240106	June 2, 2004	July 11, 1975.
Tennessee: Townsend, City of, Blount County	470281	.....do	June 18, 1976.
Vermont: Danville, Town of, Caledonia County	500185	June 7, 2004	Jan. 17, 1975.
North Carolina: Hildebran, Town of, Burke County	370519	.....do	Never Mapped.
Iowa: Hazleton, City of, Buchanan County	190330	July 8, 2004	May 28, 1976 FHBM.
Colorado: New Castle, Town of, Garfield County	080256	July 22, 2004	July 25, 1975 FHBM.
Utah: Daggett County, Unincorporated Areas	490230	.....do	Never Mapped.
Nebraska: Elba, Village of, Howard County	310514	Aug. 5, 2004	Do.
Texas: Kress, City of, Swisher County	481012	Aug. 31, 2004	Feb. 21, 1975 FHBM.
Kansas: Lincoln County, Unincorporated Areas	200591	Aug. 23, 2004	Never Mapped.
Missouri: Edmundson, City of, St. Louis County	280729	Aug. 31, 2004	Never Mapped.
Kentucky: London, City of, Laurel County	210396	Sept. 8, 2004	Never Mapped.
Texas: Fannin County, Unincorporated Areas	480807	Sept. 9, 2004	Dec. 8, 1977 FHBM.
New Eligibles: Regular Program			
North Carolina:			
Bethel, Town of, Pitt County**	370546	Jan. 2, 2004	Jan. 2, 2004.
Falkland, Town of, Pitt County**	370666	.....do	Do.
Grimesland, Town of, Pitt County**	370535	.....do	Do.
Simpson Village of, Pitt County**	370615	.....do	Do.
Nebraska: Kearney County, Unincorporated Areas**	310448	Jan. 16, 2004	Jan. 16, 2004.
Washington: Lummi Indian Reservation, Tribe of, Whatcom County**.	530331	.....do	Do.
Nebraska: Nickerson, Town of, Dodge County	310070	Jan. 20, 2004	NSFHA.
Arkansas: Dyer, Town of, Crawford County	050408	Jan. 30, 2004	Dec. 20, 2000.
Missouri: Fair Grove, City of, Greene County	290591	.....do	June 27, 1975 FHBM Rescinded. Adopted Green County FIRM panel 0025B, dated June 15, 1983.
North Carolina: Alleghany County, Unincorporated Areas**	370004	Feb. 1, 2004	Feb. 1, 2004.
North Carolina:			
Huntersville, Town of, Mecklenburg County**	370478	Feb. 4, 2004	Feb. 4, 2004.
Matthews, Town of, Mecklenburg County**	370310	.....do	Do.
Washington: Anacortes, City of, Skagit County**	530317	Feb. 23, 2004	Sept. 17, 2003.
Prescott, Town of, Walla Walla County.**	530259	.....do	Jan. 18, 2002.
Wisconsin: Markesan, City of, Green Lake County.**	550169	.....do	July 2, 2003.
Maine: Washington, Town of, Knox County.**	230082	Mar. 1, 2004	Mar. 1, 2004.
New York: Atlantic Beach, Village of, Nassau County	360458	Mar. 9, 2004	Use Town of Hempstead (CID 360467) FIRM panels 0284, 0303, and 0304.
North Carolina: Beech Mountain, Town of, Watauga County	370480	Mar. 12, 2004	Use Watauga County (CID 370254) panels 0150, 0151, and 0153.
West Virginia: Pleasant Valley, City of, Marion County	540292	Mar. 29, 2004	Use Marion County (CID 540097) FIRM panels 0079 and 0090 dated July 2, 1992; 0085 dated Oct. 18, 1995; 0095 and 0097 dated July 4, 1988.

State/location	Community No.	Effective date of eligibility	Current effective map date
Missouri: Christian County, Unincorporated Areas.**	290847	Apr. 1, 2004	Apr. 1, 2004.
Duenweg, City of, Jasper County	290182	.....do	Use Jasper County (CID 290807) FIRM panels 0180 and 0190 dated Apr. 17, 1985.
Hillsboro, City of, Jefferson County	290573	.....do	Apr. 1, 2004.
Taney County, Unincorporated Areas	290435	.....do	Do.
Texas: Beasley, City of, Fort Bend County	481654	.....do	Apr. 20, 2000 All Zone C.
Crockett County, Unincorporated Areas.**	480158	.....do	Apr. 1, 2004.
Erath County, Unincorporated Areas.**	480218	.....do	Do.
Karnes County, Unincorporated Areas.**	481175	.....do	Do.
Navaro County, Unincorporated Areas.**	480950	.....do	Do.
Van Zandt County, Unincorporated Areas.**	481040	.....do	Do.
Washington: Spokane Valley, City of, Spokane County	530342	.....do	Use Spokane County (CID 530174) FIRM panels 0285, 0294, 0300, 0304, 0315, 0382 and 0401 dated Sept. 30, 1992.
Alabama: Taylor, Town of, Houston County	010108	Apr. 15, 2004	Nov. 21, 2002.
Texas: Volente, Village of, Travis County	481696	.....do	Use Travis County (CID 481026) FIRM panel 0280E dated June 16, 1993.
Arkansas: Cherokee Village, City of, Sharp County.**	050603	Apr. 16, 2004	Apr. 16, 2004.
Illinois: Williamsville, Village of, Sangamon County.**	171041	May 3, 2004	May 3, 2004.
Oklahoma: Commerce, City of, Ottawa County	400156	May 5, 2004	July 18, 1985.
Florida: Doral, City of, Miami-Dade County	120041	May 12, 2004	Use Miami-Dade County (CID 120635) FIRM panels 0075, 0160, 0170 dated Mar. 2, 1994.
Arkansas: Georgetown, Town of, White County.**	050605	May 13, 2004	Use the White County (CID 050467) FIRM panel 0015 dated Mar. 1, 2000.
Illinois: Coles County, Unincorporated Areas	170986		Aug. 5, 1985.
Spaulding, Village of, Sangamon County	171050	.....do	May 3, 2004.
Kansas: Mitchell County, Unincorporated Areas	200225	.....do	June 15, 1988.
New Hampshire: Chichester, Town of, Merrimack County	330109	May 14, 2004	Sept. 1, 1978.
New York: Victor, Village of, Ontario County.**	361648	May 17, 2004	May 17, 2004.
Ohio: Glendale, Village of, Hamilton County.**	390217	.....do	Do.
Wisconsin: Suamico, Village of, Brown County	550660	May 24, 2004	Nov. 4, 1992.
Arkansas: Lincoln, City of, Washington County	050338	June 1, 2004	Dec. 20, 2000.
Plainview, City of, Yell County	050363	.....do	Mar. 4, 2003.
Prairie Grove, City of, Washington County	050587	.....do	Dec. 2000.
Georgia: McDonough, City of, Henry County.**	130342	.....do	June 1, 2004.
Indiana: Sheridan, Town of, Hamilton County	180516	.....do	Feb. 19, 2003.
Illinois: Trenton, City of, Clinton County	170924	June 2, 2004	June 2, 2004.
California: Goleta, City of, Santa Barbara County	060771	.....do	Do.
Alabama: Valley Grande, City of, Dallas County	010312	June 8, 2004	Use Dallas County. (CID 010063) FIRM panels 0020, 0025, 0040, 0050, and 0070 dated Sept. 29, 1986.
Florida: Miami Gardens, City of, Miami-Dade County	120345	June 21, 2004	Use Miami-Dade. County (CID 120635) FIRM panels 0080, 0082, 0083 and 0090 dated Mar. 2, 1994.
California: Laguna Woods, City of, Orange County	060768	June 25, 2004	Feb. 18, 2004.
Missouri: Lake Annette, City of, Cass County	290953	.....do	Use Cass County (CID 290783) FIRM panel 0100 dated May 4, 1992.
North Carolina: Cove City, Town of, Craven County.**	370601	July 2, 2004	July 16, 2004.
LaGrange, Town of, Lenoir County.**	370579	.....do	Do.
Texas: Salado, City of, Bell County	480033	July 8, 2004	Use Bell County (CID 480706) FIRM panels 0280 and 0345 dated Feb. 15, 1984.
Wisconsin: New Richmond, City of, St. Croix County.**	550384	July 16, 2004	July 16, 2004.
Texas: East Bernard, City of, Wharton County	480650	July 22, 2004	Use Wharton County (CID 480652) FIRM panel 0150 dated Nov. 7, 2001.
New Hampshire: Loudon, Town of, Merrimack County.**	330117	Aug. 1, 2004	Aug. 1, 2004.
Georgia: Ailey, City of, Montgomery County.**	130360	.....do	Do.
Glenwood, City of, Wheeler County.**	130419	.....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date
Ohio: Sherwood, Village of, Defiance County	390859	Aug. 9, 2004	Rescinded FHBM. Use Defiance County (CID 390143) FIRM panel 0105 dated Aug. 2, 1990.
Alabama: Ohatchee, Town of, Calhoun County	010232	Aug. 18, 2004	Use Calhoun County (CID 010013) FIRM panels 0025 and 0125 dated Sept. 15, 1983.
Arkansas: Enola, City of, Faulkner County	050589	Aug. 23, 2004	Sept. 27, 1991—All Zone C—No published FIRM.
Utah: Holladay, City of, Salt Lake County	490253	Aug. 24, 2004	Use Salt Lake County (CID 490102) FIRM panels 0312 and 0314 dated Sept. 21,2001.
Georgia: Molena, City of, Pike County.**	130376	Sept. 1, 2004	Sept. 1, 2004.
Kansas: Douglass, City of, Butler County	200489	.....do	All Zone C—No Published FIRM.
Arkansas: Springtown, Town of, Benton County	050004	Sept. 9, 2004	Use Benton County (CID 050419) FIRM panel 0140 dated Sept. 18, 1991.
California: Rancho Cordova, City of, Sacramento County	060772	Sept. 15, 2004	Use Sacramento County (CID 060262) FIRM panels 0205, 0210, 0215 and 0220 dated May 22, 2000.
Reinstatements			
Arkansas: Tupelo, City of, Jackson County	050106	June 4, 1975 Emerg.; Jan. 23, 1979, Reg.; Aug. 16, 1988, Susp.; Jan. 30, 2004 Rein.	NSFHA.
Illinois:			
Freeburg, Village of, St. Clair County	170790	Mar. 24, 1976, Emerg.; Jan. 18, 1980, Reg.; Nov. 7, 2003, Susp.; Feb. 4, 2004, Rein.	Nov. 5, 2003.
New Athens, Village of, St. Clair County	170632	Sept. 3, 1975, Emerg.; Mar. 23, 1984, Reg.; Nov. 7, 2003, Susp.; Feb. 4, 2004, Rein.	Do.
Georgia: Hart County, Unincorporated Areas	130467	Sept. 26, 1978 Emerg.; Sept. 1, 1987, Reg.; Sept. 1, 1987, Susp.; Mar. 12, 2004, Rein.	Sept. 1, 1987.
Ohio: Crown City, Village of, Gallia County	390187	Apr. 22, 1983, Emerg.; July 5, 1983, Reg.; Oct. 22, 2003, Susp.; Apr. 1, 2004, Rein.	Oct. 16, 2003.
New Mexico: Eddy County, Unincorporated Areas	350120	Oct. 22, 1975, Emerg.; Jan. 18, 1989, Susp.; Apr. 22, 2004, Rein; Apr. 22, 2004, Reg.	June 4, 1996.
Pennsylvania: Findley, Township of, Mercer County	421866	Aug. 12, 1975, Emerg.; Feb. 4, 1983, Reg.; Sept. 2, 1993, Susp.; June 2, 2004, Rein.	Feb. 4, 1983.
Illinois:			
Auburn, City of, Sangamon County	170944	May 13, 1980, Emerg.; Aug. 19, 1985, Reg.; May 4, 2004, Susp.; June 4, 2004, Rein.	May 3, 2004.
Summerfield, Village of, St. Clair County	170636	Aug. 11, 1976, Emerg.; Aug. 10, 1979, Reg.; Nov. 7, 2003, Susp.; June 4, 2004, Rein.	Nov. 5, 2003.
Fayetteville, Village of, St. Clair County	170628	May 12, 1976, Emerg.; June 15, 1981, Reg.; Nov. 7, 2003, Susp.; June 9, 2004, Rein.	Nov. 5, 2003.

State/location	Community No.	Effective date of eligibility	Current effective map date
Ohio: Evendale, Village of, Hamilton County	390214	June 27, 1977, Emerg.; Sept. 29, 1986, Reg.; May 18, 2004, Susp.; June 21, 2004, Rein.	May 17, 2004.
Alabama: Ragland, Town of, St. Clair County	010190	June 26, 1975, Emerg.; June 3, 1986, Reg.; June 3, 1986, Susp.; July 15, 2004, Rein.	June 3, 1986.
Maine: Hope, Town of, Knox County	230226	Apr. 5, 1976, Emerg.; February 19, 1986, Reg.; Feb. 19, 1986, Susp.; July 23, 2004, Rein.	Feb. 19, 1986.
Nebraska: Talmage, Village of, Otoe County	310167	Dec. 23, 1974, Emerg.; June 1, 1982, Reg.; June 1, 1982, Susp.; Aug. 9, 2004, Rein.	Aug. 9, 2004.
Minnesota: Brooklyn Park, City of, Hennepin County	270152	Feb. 5, 1974, Emerg.; May 17, 1982, Reg.; Sept. 3, 2004, Susp.; Sept. 27, 2004, Rein.	Sept. 2, 2004.
Suspensions			
North Carolina: Youngsville, Town of, Franklin County	370494	June 30, 1997, Emerg.; Jan. 19, 2001, Reg., Jan. 17, 2004, Susp.	Jan. 16, 2004.
Illinois: Auburn, City of, Sangamon County	170944	May 13, 1980, Emerg.; Aug. 19, 1985, Reg.; May 4, 2004, Susp.	May 3, 2004.
Ohio: Evendale, Village of, Hamilton County	390214	June 27, 1977, Emerg.; Sept. 29, 1986, Reg.; May 18, 2004, Susp.	May 17, 2004.
Illinois: Keyesport, Village of, Clinton County	170860	July 19, 1978, Emerg.; Aug. 19, 1985, Reg.; June 3, 2004, Susp.	June 2, 2004.
Minnesota: Brooklyn Park, City of, Hennepin County	270152	Feb. 5, 1974, Emerg.; May 17, 1982, Reg.; Sept. 3, 2004, Susp.	Sept. 2, 2004.
Greenwood, City of, Hennepin County	270164	July 25, 1975, Emerg.; Dec. 26, 1978, Reg.; Sept. 3, 2004, Susp.	Do.
Minnetonka Beach, City of, Hennepin County	270174	June 9, 1975, Emerg.; June 22, 1984, Reg.; Sept. 3, 2004, Susp.	Do.
New Hope, City of, Hennepin County	270177	July 2, 1975, Emerg.; Jan. 2, 1981, Reg.; Sept. 3, 2004, Susp.	Do.
Shorewood, City of, Hennepin County	270185	Apr. 8, 1975, Emerg.; Dec. 4, 1979, Reg.; Sept. 3, 2004, Susp.	Do.
St. Anthony, City of, Hennepin County	270716	Feb. 26, 1998, Emerg.; Sept. 2, 2004, Reg.; Sept. 3, 2004, Susp.	Do.
Withdrawals			
Alaska: Haines, City of, Haines Borough	020008	June 16, 2004	May 1, 1987 (Community disincorporated and the area was absorbed into the surrounding Borough which does not participate in the NFIP.)
West Virginia: Littleton, Town of, Wetzel County	540255	Sept. 27, 2004	Aug. 24, 1984 (On Aug. 10, 2004, Headquarters received a request from State Office of Emergency Management with concurrence from the Regional Office requesting that the Town of Littleton be removed from the NFIP).

State/location	Community No.	Effective date of eligibility	Current effective map date
NFIP Community Suspension Rescissions			
Region V			
Ohio: Medina County, Unincorporated Areas	390378	Dec. 2, 2003, Suspension Notice Rescinded.	Dec. 2, 2003.
Region VII			
Kansas: Gridley, City of, Coffey County	200064	.....do	Do.
Region III			
Pennsylvania:			
College, Township of, Centre County	420259	Dec. 16, 2004, Suspension Notice Rescinded.	Dec. 16, 2004.
Harris, Township of, Centre County	420262	.....do	Do.
Region II			
New York: Dover, Town of, Duchess County	361335	Jan. 2, 2004, Suspension Notice Rescinded.	Jan. 2, 2004.
Region I			
Massachusetts: Chelmsford, Town of, Middlesex County	250188	Jan. 16, 2004, Suspension Notice Rescinded.	Jan. 16, 2004.
Region IV			
North Carolina:			
Columbia, Town of, Tyrrell County	370233	.....do	Do.
Franklin County, Unincorporated Areas	370377	.....do	Do.
Franklinton, Town of, Franklin County	370497	.....do	Do.
Louisburg, Town of, Franklin County	370098	.....do	Do.
Region VII			
Nebraska:			
Axtell, Village of, Kearney County	310344	.....do	Do.
Kearney County, Unincorporated Areas	310448	.....do	Do.
Minden, City of, Kearney County	310389	.....do	Do.
Region III			
Virginia: Bristol, Independent City	510022	Feb. 4, 2004, Suspension Notice Rescinded.	Feb. 4, 2004.
Region V			
Illinois:			
Hanover Park, Village of, Cook County, Du Page County	170099	.....do	Do.
Schaumburg, Village of, Cook County, Du Page County	170158	.....do	Do.
Cook County, Unincorporated Areas	170054	.....do	Do.
Region V			
Ohio:			
Fayette County, Unincorporated Areas	390164	Mar. 2, 2004, Suspension Notice Rescinded.	Mar. 2, 2004.
Jeffersonville, Village of, Fayette County	390165	.....do	Do.
Washington Court House, City of, Fayette County	390166	.....do	Do.
Region III			
Pennsylvania:			
Anthony, Township of, Lycoming County	420971	Mar. 16, 2004, Suspension Notice Rescinded.	Mar. 16, 2004.
Armstrong, Township of, Lycoming County	420635	.....do	Do.
Bastress, Township of, Lycoming County	422472	.....do	Do.
Brady, Township of, Lycoming County	421169	.....do	Do.
Brown, Township of, Lycoming County	420636	.....do	Do.
Cascade, Township of, Lycoming County	421837	.....do	Do.
Clinton, Township of, Lycoming County	420637	.....do	Do.
Cogan House, Township of, Lycoming County	421838	.....do	Do.
Cummings, Township of, Lycoming County	420638	.....do	Do.
Duboistown, Borough of, Lycoming County	420639	.....do	Do.
Eldred, Township of, Lycoming County	421839	.....do	Do.
Fairfield, Township of, Lycoming County	420972	.....do	Do.
Franklin, Township of, Lycoming County	420973	.....do	Do.
Gamble, Township of, Lycoming County	420974	.....do	Do.
Hepburn, Township of, Lycoming County	420640	.....do	Do.
Hughesville, Borough of, Lycoming County	420641	.....do	Do.
Jackson, Township of, Lycoming County	422601	.....do	Do.
Jersey Shore, Borough of, Lycoming County	420642	.....do	Do.
Jordan, Township of, Lycoming County	422596	.....do	Do.
Lewis, Township of, Lycoming County	420643	.....do	Do.
Limestone, Township of, Lycoming County	422588	.....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date
Loyalsock, Township of, Lycoming County	421040	.....do	Do.
Lycoming, Township of, Lycoming County	420644	.....do	Do.
McHenry, Township of, Lycoming County	420975	.....do	Do.
McIntyre, Township of, Lycoming County	420645	.....do	Do.
McNett, Township of, Lycoming County	422597	.....do	Do.
Mifflin, Township of, Lycoming County	422590	.....do	Do.
Mill Creek, Township of, Lycoming County	421845	.....do	Do.
Montgomery, Borough of, Lycoming County	420646	.....do	Do.
Montoursville, Borough of, Lycoming County	420648	.....do	Do.
Moreland, Township of, Lycoming County	421846	.....do	Do.
Muncy Creek, Township of, Lycoming County	420650	.....do	Do.
Muncy, Borough of, Lycoming County	420649	.....do	Do.
Muncy, Township of, Lycoming County	421847	.....do	Do.
Nippenose, Township of, Lycoming County	420651	.....do	Do.
Old Lycoming, Township of, Lycoming County	420652	.....do	Do.
Penn, Township of, Lycoming County	421848	.....do	Do.
Piatt, Township of, Lycoming County	420653	.....do	Do.
Picture Rocks, Borough of, Lycoming County	420654	.....do	Do.
Pine, Township of, Lycoming County	420954	.....do	Do.
Plunketts Creek, Township of, Lycoming County	420655	.....do	Do.
Porter, Township of, Lycoming County	420656	.....do	Do.
Salladasburg, Borough of, Lycoming County	420657	.....do	Do.
Shrewsbury, Township of, Lycoming County	421148	.....do	Do.
South Williamsport, Borough of, Lycoming County	420658	.....do	Do.
Susquehanna, Township of, Lycoming County	420659	.....do	Do.
Upper Fairfield, Township of, Lycoming County	420660	.....do	Do.
Washington, Township of, Lycoming County	422613	.....do	Do.
Watson, Township of, Lycoming County	420661	.....do	Do.
Williamsport, City of, Lycoming County	420662	.....do	Do.
Wolf, Township of, Lycoming County	420663	.....do	Do.
Woodward, Township of, Lycoming County	420664	.....do	Do.
Region V			
Ohio:			
Bexley, City of, Franklin County	390168	.....do	Do.
Columbus, City of, Fairfield County, Franklin County	390170	.....do	Do.
Dublin, City of, Delaware County, Franklin County	390673	.....do	Do.
Franklin County, Unincorporated Areas	390167	.....do	Do.
Grandview Heights, City of, Franklin County	390172	.....do	Do.
Grove City, City of, Franklin County	390173	.....do	Do.
Marble Cliff, Village of, Franklin County	390896	.....do	Do.
Obetz, Village of, Franklin County	390176	.....do	Do.
Upper Arlington, City of, Franklin County	390178	.....do	Do.
Region II			
New York:			
Blenheim, Town of, Schoharie County	361580	Apr. 2, 2004, Suspension Notice Rescinded.	Apr. 2, 2004.
Broome, Town of, Schoharie County	361431	.....do	Do.
Cobleskill, Town of, Schoharie County	361573	.....do	Do.
Cobleskill, Village of, Schoharie County	360743	.....do	Do.
Esperance, Town of, Schoharie County	361194	.....do	Do.
Esperance, Village of, Schoharie County	361542	.....do	Do.
Schoharie, Village of, Schoharie County	361061	.....do	Do.
Sharon Springs, Village of, Schoharie County	361549	.....do	Do.
Wright, Town of, Schoharie County	361202	.....do	Do.
Region V			
Minnesota: Jackson, City of, Jackson County	270213	.....do	Do.
Region X			
Oregon:			
Talent, City of, Jackson County	410100 April	Apr. 16, 2004, Suspension Notice Rescinded.	Apr. 16, 2004.
Tillamook, City of, Jackson County	410202	.....do	Do.
Region V			
Illinois:			
Auburn, City of, Sangamon County	170944	May 3, 2004, Suspension Notice Rescinded.	May 3, 2004.
Chatham, Village of, Sangamon County	170601	.....do	Do.
Divernon, Village of, Sangamon County	170949	.....do	Do.
Jerome, Village of, Sangamon County	171004	.....do	Do.
Leland Grove, City of, Sangamon County	170925	.....do	Do.
Loami, Village of, Sangamon County	170795	.....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date
Pawnee, Village of, Sangamon County	170602	.....do	Do.
Pleasant Plains, Village of, Sangamon County	170798	.....do	Do.
Riverton, Village of, Sangamon County	170603	.....do	Do.
Rochester, Village of, Sangamon County	170840	.....do	Do.
Sangamon County, Unincorporated Areas	170912	.....do	Do.
Sherman, Village of, Sangamon County	170969	.....do	Do.
Springfield, City of, Sangamon County	170604	.....do	Do.
Thayer, Village of, Sangamon County	170804	.....do	Do.
Williamsville, Village of, Sangamon County	171041	.....do	Do.
Region II			
New Jersey: Greenwich, Township of, Warren County	340483	May 17, 2004 Suspension Notice Rescinded.	May 17, 2004.
New York:			
Schuyler Falls, Town of, Clinton County	360172	.....do	Do.
Victor, Village of, Ontario County	361648	.....do	Do.
Woodstock, Town of, Ulster County	360868	.....do	Do.
Region V			
Ohio:			
Addyston, Village of, Hamilton County	390205	.....do	Do.
Amberley, Village of, Hamilton County	390206	.....do	Do.
Arlington Heights, Village of, Hamilton County	390207	.....do	Do.
Blue Ash, City of, Hamilton County	390208	.....do	Do.
Cincinnati, City of, Hamilton County	390210	.....do	Do.
Cleves, Village of, Hamilton County	390211	.....do	Do.
Elmwood Place, Village of, Hamilton County	390213	.....do	Do.
Fairfax, Village of, Hamilton County	390215	.....do	Do.
Glendale, Village of, Hamilton County	390217	.....do	Do.
Greenhills, Village of, Hamilton County	390219	.....do	Do.
Hamilton County, Unincorporated Areas	390204	.....do	Do.
Harrison, City of, Hamilton County	390220	.....do	Do.
Indian Hill, Village of, Hamilton County	390221	.....do	Do.
Lockland, Village of, Hamilton County	390223	.....do	Do.
Loveland, City of, Hamilton County	390068	.....do	Do.
Madeira, City of, Hamilton County	390225	.....do	Do.
Montgomery, City of, Hamilton County	390228	.....do	Do.
Mount Healthy, City of, Hamilton County	390229	.....do	Do.
Newtown, Village of, Hamilton County	390230	.....do	Do.
North Bend, Village of, Hamilton County	390231	.....do	Do.
North College Hill, City of, Hamilton County	390232	.....do	Do.
Reading, City of, Hamilton County	390234	.....do	Do.
Sharonville, City of, Hamilton County	390236	.....do	Do.
Springdale, City of, Hamilton County	390877	.....do	Do.
St. Bernard, City of, Hamilton County	390235	.....do	Do.
Terrace Park, Village of, Hamilton County	390633	.....do	Do.
Woodlawn, Village of, Hamilton County	390239	.....do	Do.
Wyoming, City of, Hamilton County	390240	.....do	Do.
Region VIII			
North Dakota:			
Fort Yates, City of, Sioux County	380111	.....do	Do.
Sioux County, Unincorporated Areas	380321	.....do	Do.
Solen, City of, Sioux County	380114	.....do	Do.
Standing Rock Indian Reservation, Sioux County	380697	.....do	Do.
South Dakota:			
Blunt, City of, Hughes County	460039	.....do	Do.
Corson County, Unincorporated Areas	460237	.....do	Do.
Fort Pierre, City of, Stanley County	465419	.....do	Do.
Hughes County, Unincorporated Areas	460271	.....do	Do.
Pierre, City of, Hughes County	460040	.....do	Do.
Standing Rock Indian Reservation, Corson County	461219	.....do	Do.
Stanley County, Unincorporated Areas	460287	.....do	Do.
Region IV			
North Carolina:			
Alliance, Town of, Pamlico County	370404	July 2, 2004 Suspension Notice Rescinded.	July 2, 2004.
Bayboro, Town of, Pamlico County	370183	.....do	Do.
Bridgeton, Town of, Craven County	370436	.....do	Do.
Havelock, City of, Craven County	370265	.....do	Do.
Jones County, Unincorporated Areas	370379	.....do	Do.
Kinston, City of, Lenoir County	370145	.....do	Do.
LaGrange, Town of, Lenoir County	370579	.....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date
Maysville, Town of, Jones County	370330	.....do	Do.
Minnesott Beach, Town of, Pamlico County	370418	.....do	Do.
New Bern, City of, Craven County	370074	.....do	Do.
Oriental, Town of, Pamlico County	370279	.....do	Do.
Pamlico County, Unincorporated Areas	370181	.....do	Do.
Pollocksville, Town of, Jones County	370142	.....do	Do.
Stonewall, Town of, Pamlico County	370437	.....do	Do.
Trenton, Township of, Jones County	370141	.....do	Do.
Vanceboro, Town of, Craven County	370075	.....do	Do.
Vandemere, Town of, Pamlico County	370438	.....do	Do.
Region V			
Wisconsin: New Richmond, City of, St. Croix County	550384	July 16, 2004, Suspension Notice Rescinded.	July 16, 2004.
Region VII			
Nebraska:			
Dunbar, Village of, Otoe County	310163	Aug. 4, 2004, Suspension Notice Rescinded.	Aug. 4, 2004.
Otoe County, Unincorporated Areas	310462	.....do	Do.
Region V			
Minnesota:			
Brooklyn Center, City of, Hennepin County	270151	Sept. 2, 2004, Suspension Notice Rescinded.	Sept. 2, 2004
Camplin, City of, Hennepin County	270153	.....do	Do.
Corcoran, City of, Hennepin County	270155	.....do	Do.
Crystal, City of, Hennepin County	270156	.....do	Do.
Dayton, City of, Hennepin County	270157	.....do	Do.
Deephaven, City of, Hennepin County	270158	.....do	Do.
Eden Prairie, City of, Hennepin County	270159	.....do	Do.
Edina, City of, Hennepin County	270160	.....do	Do.
Excelsior, City of, Hennepin County	270161	.....do	Do.
Greenfield, City of, Hennepin County	270673	.....do	Do.
Hanover, City of, Hennepin County County and Wright County	270540	.....do	Do.
Hopkins, City of, Hennepin County	270166	.....do	Do.
Independence, City of, Hennepin County	270167	.....do	Do.
Long Lake, City of, Hennepin County	270168	.....do	Do.
Loretto, City of, Hennepin County	270659	.....do	Do.
Maple Plain, City of, Hennepin County	270170	.....do	Do.
Medicine Lake, City of, Hennepin County	270690	.....do	Do.
Medina, City of, Hennepin County	270171	.....do	Do.
Minneapolis, City of, Hennepin County	270172	.....do	Do.
Minnetonka, City of, Hennepin County	270173	.....do	Do.
Minnetrista, City of, Hennepin County	270175	.....do	Do.
Orono, City of, Hennepin County	270178	.....do	Do.
Plymouth, City of, Hennepin County	270179	.....do	Do.
Richfield, City of, Hennepin County	270180	.....do	Do.
Robbinsdale, City of, Hennepin County	270181	.....do	Do.
Rockford, City of, Hennepin County	270182	.....do	Do.
Spring Park, City of, Hennepin County	270186	.....do	Do.
St. Bonifacius, City of, Hennepin County	270183	.....do	Do.
St. Louis Park, City of, Hennepin County	270184	.....do	Do.
Tonka Bay, City of, Hennepin County	270187	.....do	Do.
Wayzata, City of, Hennepin County	270188	.....do	Do.
Woodland, City of, Hennepin County	270189	.....do	Do.
Region VII			
Nebraska:			
Deshler, City of, Thayer County	310218	Sept. 30, 2004 Suspension Notice Rescinded.	Sept. 30, 2004
Hebron, City of, Thayer County	310219	.....do	Do.
Hubbell, Village of, Thayer County	310220	.....do	Do.
Stanton, City of, Stanton County	310217	.....do	Do.
Stanton County, Unincorporated Areas	310478	.....do	Do.
Thayer County, Unincorporated Areas	310479	.....do	Do.
Region VIII			
Montana: Fort Peck Indian Reservation	300187	.....do	Do.

* do and Do. = ditto.

** Designates communities converted from Emergency Phase of participation to the Regular Phase of participation.

Code for reading third and fourth columns: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

David I. Maurstad,

Acting Director, Mitigation Division, Emergency Preparedness and Response Directorate.

[FR Doc. 04–28321 Filed 12–27–04; 8:45 am]

BILLING CODE 6718–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 303

Child Support Enforcement Program; Reasonable Quantitative Standard for Review and Adjustment of Child Support Orders

AGENCY: Office of Child Support Enforcement (OCSE), Health and Human Services (HHS).

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule revises existing regulations on review and adjustment of child support orders to reinstate a rule which was in place since 1993. The change permits States to once again use reasonable quantitative standards in adjusting an existing child support award amount after conducting a review of the order, regardless of the method of review used.

DATES: These regulations are effective December 28, 2004. Consideration will be given to comments received February 28, 2005.

ADDRESSES: Send comments to: Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th floor, Washington, DC 20447. Attention: Director, Division of Policy, Mail Stop: OCSE/DP. Comments will be available for public inspection Monday through Friday 8:30 a.m. to 5 p.m. on the 4th floor of the Department's offices at the above address. To download an electronic version of the rule, you may access *http://www.regulations.gov.* You may also transmit written comments electronically via the Internet at *http://www.regulations.acf.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Matheson, Division of Policy, OCSE, 202–401–9386, e-mail: *ematheson@acf.hhs.gov.* Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. eastern time.

SUPPLEMENTARY INFORMATION:

Statutory Authority

The provisions of this regulation pertaining to review and adjustment of child support orders are published under the authority granted to the Secretary by section 466(a) of the Social Security Act (the Act), 42 U.S.C. 666(a). Section 466(a) requires each State to have in effect laws requiring the use of specified procedures, consistent with this section of the Act and regulations of the Secretary, to increase the effectiveness of the Child Support Enforcement program. Review and adjustment of support orders at section 466(a)(10) of the Act is one of the required procedures.

Justification for Interim Final Rule

The Administrative Procedure Act requirements for notice of proposed rulemaking do not apply to rules when the agency finds that notice is impracticable, unnecessary or contrary to the public interest. We find proposed rulemaking unnecessary and contrary to the public interest, because the rule is not imposing new requirements or burdens on States, but is removing an administrative requirement and burden on agencies and families that was added to the technical corrections final regulation published in the **Federal Register** on May 12, 2003 (68 FR 25293). Without opportunity for public comment, that regulation implemented a substantive change to prior policy that was not warranted under any intervening amendment to the relevant statute. The change required States to adjust an order for support after a guidelines review, regardless of the amount by which the existing order is found to deviate from the State's support guidelines. The statute, as in effect before and after this change, provided that such adjustments were only required ''if appropriate.'' Prior to that regulation, since 1993, States could apply a reasonable quantitative standard for adjustment of an order regardless of the method of their review of the order. This regulation reinstates the prior rule with opportunity for public comment. Because the regulatory change published on May 12 did not allow for public comment, and this rule merely reinstates the prior regulation which was issued pursuant to notice and comment, advance notice is unnecessary.

Background

1992 Regulations

Under the authority of sections 466(a)(10) and 1102 of the Act, OCSE published regulations on review and adjustment of child support orders in 1992. They were effective in October, 1993. In the preamble to that regulation, the basis for seeking an adjustment to an order was described as paraphrased below.

In the 1992 regulation, 45 CFR 303.8(d) specified the requirements States had to meet in seeking adjustments to child support orders in IV–D cases. Paragraph (d)(1) required that an inconsistency between the existent child support order amount and the amount of child support which resulted from application of the State guidelines must be an adequate basis, under State law, for petitioning for an adjustment of an order in a IV–D case, whether or not the order was established using guidelines.

Paragraph (d)(2) of the 1992 regulation provided for an exception that allowed States to establish a quantitative standard based upon either a fixed dollar amount or percentage, or both, as a basis for determining whether an inconsistency is adequate grounds for petitioning for adjustment of the order. That quantitative standard, or threshold, was to be used as a basis for determining whether the inconsistency was sufficient to justify proceeding with a petition or motion for adjustment of an award, not as a criterion for deciding whether to review. Threshold standards were not needed if States adjusted all orders regardless of the degree of inconsistency with the guidelines. However, thresholds could serve to prevent inundating the adjustment process with cases in which the variance was minimal between the current order amount and the amount that would result from an application of the guidelines.

The quantitative standard permitted by the 1992 regulation was meant to be used as a post-review decision-making tool. It was not intended to restrict the use of guidelines in setting and modifying support nor to limit the authority of the court or other authority to find, in a particular case, that an award based on guidelines was unfair or inappropriate. In making any adjustment to the amount of support, the judicial or administrative process still had to apply the State guidelines. Under regulations at 45 CFR 302.56, Guidelines for setting child support awards, the child support award calculated to be due under the guidelines was rebuttably presumed to be the correct amount of support to be paid.

1997 Action Transmittal

OCSE issued policy on review and adjustment of orders in OCSE–AT–97–10 on July 30, 1997, in response to

provisions of Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, relating to review and adjustment. In that action transmittal, OCSE continued to permit States to use a reasonable quantitative standard for determining whether or not to adjust an order. Pertinent questions and answers from the action transmittal are summarized below.

Q. 4. Does the requirement to ''adjust the order in accordance with the guidelines * * * if the amount * * * differs'' preclude a State law providing a threshold deviation of, for example, 15% before an adjustment is deemed appropriate?

A. No. Section 466(a)(10)(A)(i)(I) of the Act, as amended by section 351 of Pub. L. 104–193, does not preclude a State law from providing a threshold deviation before an adjustment of an order is appropriate. First of all, according to section 466(a)(10)(A)(i) of the Act, the State must take ''into account the best interests of the child involved.'' A small reduction in support, or even an increase, because of a deviation in the guidelines' amount might not be in the child's best interests. Secondly, statute and regulations allow the State to adjust the order, or determine that there should be no adjustment, if appropriate, in accordance with the State's guidelines for setting child support awards. Given the latitude States have to apply cost-of-living adjustments, or to set thresholds if they use automated methods, it was stated that there was similar latitude for States to determine that small deviations are ''inappropriate'' for adjustment.

Given the complexity of the most States'' review and adjustment process, as well as State child support guidelines, it may not be in the child's best interest for parents, child support agencies, and courts to wrangle over very small amounts of money. The application of child support guidelines often involves far more than a simple calculation of a portion of a parent's income. Both the review process and the adjustment process are time-consuming and involve multiple parties in most States. Despite authority in the Federal statute, very few States have automated review processes in place and about half the States have court-based systems for adjusting orders.

Q. 7. Under section 466(a)(10)(A)(i)(I) of the Act, does ''if appropriate'' mean that if a State reviews a case under the 3-year cycle provision using State guidelines, it can determine not to adjust the order if the inconsistency between the current order and the guideline's amount does not meet the ''reasonable quantitative standard established by the State''?

A. Yes. Under section 466(a)(10)(A)(i)(I) of the Act, the language ''if appropriate, adjust the order'' is consistent with regulations which said that, if a State reviews a case under the 3-year cycle provision using State guidelines, it can determine not to adjust the order if the inconsistency between the current order and the guideline amount does not meet the ''reasonable quantitative standard established by the State''. Under the regulations, the State could establish a reasonable quantitative standard based upon either a fixed dollar amount or percentage, or both, as a basis for determining whether an inconsistency between the existent child support award amount and the amount of support which resulted from application of the guidelines was adequate grounds for petitioning for adjustment of the order. Therefore, a reasonable quantitative standard could be used to determine not to adjust the order.

Q. 8. Is it only under section 466(a)(10)(A)(i)(III) that a State can establish a standard for determining when an adjustment is warranted?

A. No. Under both sections 466(a)(10)(A)(i)(I) (guidelines review) and (III) (automated review), as amended by section 351 of Pub. L. 104–193, it is appropriate for the State to use its threshold standard to determine if an adjustment is appropriate.

Q. 10. Under section 466(a)(10)(A)(ii) of the Act does ''if appropriate'' mean that a State can determine not to (re)adjust the order if the inconsistency between current and guideline support does not merit an adjustment based on the ''reasonable quantitative standard established by the State''?

A. Yes. Under section 466(a)(10)(A)(ii) of the Act (opportunity to contest an adjustment), a State can determine not to (re)adjust the order if the inconsistency between current and guideline support does not merit an adjustment based on the reasonable quantitative standard established by the State.

Provisions of the Regulation

In OCSE–AT–97–10, OCSE said it was working on a regulation to eliminate inconsistencies between title IV–D regulations and Pub. L. 104–193. That regulation was published in the **Federal Register** on May 12, 2003. (68 FR 25293). That regulation did not retain the regulatory policy described above. Rather, it limited use of the reasonable quantitative standard to adjustments in cases that were reviewed by automated methods. In the preamble to the May 12 rule, we said: ''We are revising paragraph (c) to clarify that States may use a quantitative standard only in cases involving the use of automated methods in accordance with section 466(a)(10)(A)(i)(III) of the Act. That section alone refers to orders being ''eligible for adjustment,'' recognizing there might be some standard set to determine eligibility for adjustment. The other two methods of review (guidelines and cost-of-living) do not contain this language. Sections 303.8(a) and (d) through (f) remain as published in the interim final rule.''

The change to paragraph (c) in the May 12 final rule was not required by any change in the underlying statute, and it clearly was not mandated by Pub. L. 104–193, as the statute was interpreted in OCSE–AT–97–10. Nor should the change have been issued in a final rule without opportunity for comment. The interim final regulation in today's **Federal Register** reinstates the original rule with opportunity for public comment.

Under this interim rule a State may establish a reasonable quantitative standard, based on either a fixed dollar amount or percentage, or both, as a basis for determining whether an inconsistency between the existent child support award amount and the amount of support determined as a result of a review is adequate grounds for petitioning for adjustment of the order, regardless of the method of review. This interim final rule allows States to manage their resources and refrain from unreasonably small order adjustments that may be costly and perhaps involve changes to States' automated systems. Most States' review and adjustment process, as well as State child support guidelines, are complex and lengthy. The application of child support guidelines often involves far more than a simple calculation of a portion of a parent's income, including decisions with respect to child care, health insurance, and extraordinary medical expenses. Both the review process and the adjustment process are time-consuming and involve multiple parties in most states. Despite authority in the Federal statute for automated review and adjustment and cost-of-living increases, very few States have these automated review processes in place and about half the States have court-based, rather than administrative, systems for adjusting orders.

The rule minimizes the burden, stress and uncertainty families would face in opening up the orders to change despite little anticipated gain. In addition, the rule reduces complex agency and

tribunal record-keeping that could lead to errors and lessens the burden on employers who would need to respond to constantly adjusting income withholding orders to address small differences in the amount withheld.

It is important to note that § 303.8 continues to require States to review child support orders at least every 3 years, upon request of a parent in any case, and upon request of the State if there is an assignment of support rights under title IV–A of the Act, and make adjustments, if appropriate, if the reasonable quantitative standard for an adjustment is met. Further, under paragraph (b)(5) of this section, a State must have procedures under which a parent or other person who has standing may request a review and adjustment outside the regular 3-year (or shorter) cycle, and if the requesting party demonstrates a substantial change in circumstance, the State must adjust the order in accordance with its support guidelines.

Paperwork Reduction Act of 1995

No new information collection requirements are imposed by these regulations, nor are any existing requirements changed as a result of their promulgation. Therefore, the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), regarding reporting and record keeping, do not apply.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments. State governments are not considered small entities under the Act.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles because there is broad agreement among state IV–D agencies that removal of the burden, and reinstatement of prior policy, is necessary. Individuals, either those owing or those entitled to receive child support, will not be harmed, as only small adjustments (either up or down) in the amount of the child support obligation will be avoided. This regulation is considered a ''significant regulatory action'' under 3f of the Executive Order, and therefore has been reviewed by the Office of Management and Budget.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

We have determined that the interim final rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small governments.

Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. chapter 8.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulations may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These regulations will not have an impact on family well-being as defined in the legislation.

Executive Order 13132

Executive Order 13132 on Federalism applies to policies that have Federalism implications, defined as ''regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, or on the distributions of power and responsibilities among the various levels of government''. This rule does not have Federalism implications for State or local governments as defined in the Executive Order.

List of Subjects in 45 CFR Part 303

Child support, Grant programs—social programs.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program.)

Dated: May 25, 2004.

Wade F. Horn,

Assistant Secretary for Children and Families.

Date Approved: September 29, 2004.

Tommy G. Thompson,

Secretary of Health and Human Services.

■ For the reasons discussed above, title 45 CFR chapter III is amended as follows:

PART 303—STANDARDS FOR PROGRAM OPERATIONS

■ 1. The authority citation for part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

§ 303.8 [Amended]

■ 2. In § 303.8, paragraph (c) is amended by removing ''using automated methods under paragraph (b)(1)(iii) of this section''.

[FR Doc. 04–28410 Filed 12–27–04; 8:45 am]

BILLING CODE 4184–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 504

GSAR Amendment 2004–04; GSAR Case 2004–G509 (Change 12)

RIN 3090–AI00

General Services Administration Acquisition Regulation; Access to the Federal Procurement Data System

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Interim rule with request for comments.

SUMMARY: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) by adding coverage to specify the rate that will be charged to non-governmental entities in exchange for permitting them to establish a direct computer connection with the Federal Procurement Data System database.

DATES: *Effective Date*: December 28, 2004.

Comment Date: Interested parties should submit comments in writing on or before February 28, 2005, to be considered in the formulation of a final rule.

ADDRESSES: Submit comments, identified by GSAR Amendment 2004–04, GSAR case 2004–G509, by any of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

• E-mail: *gsarcase.2004–G509@gsa.gov*. Include GSAR Amendment 2004–04, GSAR case 2004–G509, in the subject line of the message.

• Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR Amendment 2004–04, GSAR case 2004–G509, in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/GSAM/gsamcomments.htm*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jerry Olson at (202) 501–3221. Please cite GSAR Amendment 2004–04, GSAR case 2004–G509.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Procurement Data System (FPDS) is the primary database of the Federal Government for information relating to Federal procurement. GSA, in keeping with its vision of providing greater transparency into Government contracting, announced that it will pay the costs to provide three years of free access to the public to data in the FPDS and to provide for a reduced cost for a special direct web services connection to the database.

Following is a description of the methods the public will be able to use to get data from FPDS.

The public will have access to the FPDS data using several methods:

• A copy of data can be made available using FTP (file transfer protocol) from the FPDS web site.

• Prewritten queries (that can be customized to produce data for specified period and organizations) can be used that will produce reports.

• Ad hoc queries can be written by members of the public to produce reports on nearly any desired set of FPDS data.

• Direct web services connection can be established between a public computer and the FPDS computers to use FPDS as a data source.

The first three methods are free. This rule concerns the fee for the fourth.

This interim rule establishes the one-time hook-up fee that will be charged to individuals, companies, or organizations wishing direct web services access to the database. They will be required to pay a $2,500 fee to partially cover the cost of technical support, testing, and certification of direct integration to the FPDS web services. However, they will not be required to pay a fee for the data itself. Direct access to the database may be restricted to non-peak hours, depending on level of demand and FPDS's ability to service the demand without degradation of service to other users.

We expect only a few requests for the direct integration to the FPDS web services. We expect that nearly all of the public users will use the free data and report generation tools that will also be available. The public will use the same report generation tools as Federal employees to access the database. They will have access to the same data as Federal employees and they can generate the same reports as Federal employees, with minor exceptions. Certain data may be delayed and will not be available in real-time in order to guard against inappropriate release of data that could reveal pace of operations information.

GSA previously charged citizens a price for FPDS data, representing the costs incurred by GSA for providing the information.

This rule is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This interim rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

We certify that the amendments will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because we do not expect a substantial number of small entities to request direct web services access to the FPDS database. Nearly all public access to the FPDS database is expected to occur via the free report generation tools and free data provided by GSA. GSA will consider comments from small entities concerning the affected GSAR Subpart 504.6 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite GSAR case 2004–G509, in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this interim rule does not contain any information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Administrator of General Services that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This rule is necessary to establish the rate of payment for the connection fee for direct web access to the FPDS database. Access is planned to begin immediately after December 31, 2004, and there is insufficient time to obtain public comments prior to that date. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Part 504

Government procurement.

Dated: December 20, 2004

David A. Drabkin,

Senior Procurement Executive,General Services Administration.

■ Therefore, GSA amends 48 CFR part 504 as set forth below:

PART 504—ADMINISTRATIVE MATTERS

■ 1. The authority citation for 48 CFR part 504 continues to read as follows:

Authority: 40 U.S.C. 121(c).

■ 2. Add Subpart 504.6, consisting of section 504.602–71, to read as follows:

Subpart 504.6—Contract Reporting

Sec.

504.602–71 Federal Procurement Data System-Public Access to Data.

504.602–71 Federal Procurement Data System-Public Access to Data.

(a) *The FPDS database*. The General Services Administration awarded a contract for creation and operation of the Federal Procurement Data System (FPDS) database. That database includes information reported by departments and agencies as required by Federal Acquisition Regulation (FAR) Subpart 4.6. One of the primary purposes of the FPDS database is to provide information on Government procurement to the public.

(b) Fee for direct hook-up. To the extent that a member of the public requests establishment of real-time integration of reporting services to run reports from another application, a one-time charge of $2,500 for the original integration must be paid by the requestor. This one-time charge covers the setup and certification required for an integrator to access the FPDS database and for technical assistance to help integrators use the web services. The fee will be paid to the FPDS contractor and credited to invoices submitted to GSA by the FPDS contractor.

[FR Doc. 04–28280 Filed 12–27–04; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 534

[Docket No. NHTSA 2004–19940]

RIN 2127–AG97

Fuel Economy Standards—Credits and Fines—Rights and Responsibilities of Manufacturers in the Context of Changes in Corporate Relationships

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This document establishes a new regulation governing the use of rights (credits) and liabilities (fines) under the Corporate Average Fuel Economy program in the face of changes in corporate relationships. This final rule fulfills a statutory responsibility to issue a regulation addressing these issues.

DATES: The rule is effective January 27, 2005.

Petitions for Reconsideration must be received by February 11, 2005. Petitions for reconsideration should refer to the docket and notice number of this document and be submitted to the Administrator of NHTSA 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Otto Matheke, Office of the Chief Counsel, Suite 5219, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (202–366–5263)

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I. Introduction and History

This final rule establishes a regulation governing the treatment of corporate assets and liabilities arising from the agency's Corporate Average Fuel Economy (CAFE) program in the face of changes in corporate relationships. It fulfills a statutory responsibility to define by regulation the use of CAFE credits and liabilities in light of changes in corporate structure.

In December 1975, Congress enacted the Energy Policy and Conservation Act (EPCA). The EPCA established the Corporate Average Fuel Economy (CAFE) program by adding a new Title V to the Motor Vehicle Information and Cost Saving Act. Congress has made various amendments to the fuel economy provisions since 1975, and the fuel economy provisions are now codified in Chapter 329 of Title 49 of the United States Code.

The CAFE statute requires that a manufacturer meet average fuel economy standards, as established by regulation, separately for fleets of light trucks, domestic passenger cars and imported passenger cars. A manufacturer's average fuel economy for a particular model year is calculated in accordance with 49 U.S.C. 32904. The establishment of CAFE standards and the calculation of average fuel economy is statutorily tied to ''automobiles manufactured by a manufacturer'' for any given model year. (49 U.S.C. 32902, 32904)

The statute specifically provides that, with regard to each individual fleet, a manufacturer may earn credits by exceeding the applicable standard and may use those credits, for three years forward and three years back, to offset any shortfalls in CAFE compliance applicable in a particular model year. Again the statute makes clear that the number of credits earned is tied to the volume of automobiles manufactured by the manufacturer. (49 U.S.C. 32903)

Manufacturers failing to meet the established fleet standard for a particular model year must, if they do not have credits available to offset their shortfall, pay fines to the United States Treasury. Over the history of the CAFE program, manufacturers have paid over 140 fines totaling more than $600 million. The highest fine ever paid by a single manufacturer was almost $28 million, with the average approximating $4 million.

The provisions of EPCA recognize that changes in corporate structures are common and that a ''manufacturer,'' as defined by the CAFE statute, may change in light of new corporate relationships. In 1980, Congress amended the definition of a manufacturer to explicitly contemplate corporate successors and predecessors. Congress recognized at that time that CAFE credits and responsibilities would become assets and liabilities in the course of such changes, and directed the Secretary of Transportation to promulgate regulations defining how such credits and responsibilities should be treated when corporate changes occur. (49 U.S.C. 32901(13))

The agency did not immediately move to establish the regulation Congress prescribed. Nonetheless, in 1991, the Administrator authorized the agency's Complaint Counsel to initiate an administrative complaint against the Chrysler Corporation (Chrysler). As Congress anticipated, structural corporate change gave rise to issues relating to the application of CAFE rights and responsibilities. Chrysler had purchased the assets of American Motors Company (AMC) and Chrysler had fallen short of an applicable CAFE. AMC had available credits that Chrysler wished to apply to its existing shortfall. Chrysler took the position that AMC's CAFE credits were available to the new corporate entity. Complaint Counsel disagreed and sought to impose CAFE fines for Chrysler's failure to meet the applicable CAFE standard.[1]

On January 8, 1992, an Administrative Law Judge issued an Initial Decision and Order. While expressing in dictum support for Complaint Counsel's position, the ALJ ruled that the agency could not enforce that position because it had not, as the statute anticipates, promulgated regulations in accordance with the Administrative Procedures Act. NHTSA's Administrator terminated the prosecution and directed the agency to initiate rulemaking. In an order dated March 31, 1992, NHTSA's Administrator found:

> Upon further consideration of the matters at issue in this proceeding, I have decided that NHTSA should prescribe regulations

[1] Complaint Counsel's position in the administrative proceeding was consistent with the position taken by the agency's Acting Chief Counsel in a 1990 letter to the Chrysler Corporation setting forth the agency's interpretation of the law as applied to Chrysler's acquisition of AMC. Pursuant to 49 CFR part 501.8(d)(5), the NHTSA Administrator has delegated to the Chief Counsel the authority ''to issue authoritative interpretations of the statutes administered by NHTSA and the regulations issued by the agency.''

pursuant to section 501(g) of the Act to define the extent to which predecessors and successors of manufacturers of automobiles should be included within the term 'manufacturer' for the purposes of the Act. I have therefore directed the Associate Administrator for Rulemaking to promptly commence such a proceeding.

While such a proceeding would provide helpful clarification and be consistent with the statute, in my view there is a great deal of doubt as to the correctness of the Administrative Law Judge's view that, in the absence of such regulations, an enforcement proceeding against Chrysler cannot proceed. Therefore, I am unwilling to allow the I.D. (Initial Decision) to become the Final Decision of this agency. On the other hand, I believe that continuation of this proceeding under these circumstances could result in an unnecessary expenditure of the resources of the agency and of Chrysler. Therefore, I have decided to take steps to terminate the proceeding at this time, without prejudice to the possible filing of a new administrative complaint against Chrysler following the issuance of the regulatory definitions referred to above.

The agency did not act immediately. In the early 1990s, the agency faced a variety of legal challenges raising numerous issues and focusing agency resources on the developing contours of the program. In April 1994, the agency began to consider a multi-year rulemaking to establish light truck CAFE standards for some or all of model years 1998–2006. (59 FR 16324). Congress responded by effectively ''freezing'' light truck standards. On November 15, 1995, the Department of Transportation and Related Agencies Appropriations Act for FY 1996 was enacted. Pub. L. 104–50. Section 330 of that Act provided:

None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations * * * prescribing corporate average fuel economy standards for automobiles * * * in any model year that differs from standards promulgated for such automobiles prior to enactment of this section.

Similar language in subsequent Appropriations Acts continued the freeze through model year 2003. Ongoing debate about the efficacy of the CAFE program also led Congress to require a review of the program. The conference committee report for the Department of Transportation and Related Agencies Appropriations Act for FY 2001 directed NHTSA to fund a study by the National Academy of Sciences to evaluate the effectiveness and impacts of CAFE standards (H.R. Conf. Rep. No. 106–940, at 117–118).

On January 22, 2001, six months prior to submission of the NAS report to the Department of Transportation, the agency published a notice of proposed rulemaking (NPRM) advancing regulatory text intended to formalize Complaint Counsel's positions in the 1991–1992 administrative proceeding. (66 FR 6523)

II. Applicable Statutory Provisions

The CAFE statute provides that a ''manufacturer of automobiles commits a violation if the manufacturer fails to comply with an applicable average fuel economy standard under section 32902 of this title. Compliance is determined after considering credits available to the manufacturer under section 32903 of this title.'' (49 U.S.C. 32911(b))

Section 32903 provides that ''when the average fuel economy of passenger automobiles manufactured by a manufacturer in a particular model year exceeds an applicable average fuel economy standard * * * the manufacturer earns credits.'' Those credits may be applied to any of the 3 consecutive model years immediately proceeding or following the model year during which the credits were earned.

The statute defines a ''manufacturer'' as ''(A) a person engaged in the business of manufacturing automobiles, including a predecessor or successor of the person to the extent provided under regulations prescribed by the Secretary; and (B) if more than one person is the manufacturer of an automobile, the person specified under regulations prescribed by the Secretary.'' (49 U.S.C. 32901(a)(13)) The statute defines ''an automobile manufactured by a manufacturer'' as including ''every automobile manufactured by a person that controls, is controlled by, or is under common control with the manufacturer, but does not include an automobile manufactured by the person that is exported not later than 30 days after the end of the model year in which the automobile is manufactured.'' [2]

During the 1990s, the agency provided its interpretation of the term ''automobile manufactured by a manufacturer.'' This term is crucial to this rulemaking because a manufacturer earns CAFE credits when the average fuel economy of the ''automobiles manufactured by a manufacturer'' exceeds the applicable CAFE standard for that model year. In response to a 1996 letter from Ford Motor Company seeking clarification with regard to whether vehicles produced by certain corporate affiliates could appropriately be included in its CAFE fleet, the agency reviewed the meaning of the phrase ''automobiles manufactured by a manufacturer,'' which by statute ''includes every automobile manufactured by a person that controls, is controlled by, or is under common control with the manufacturer'' (except those exported within 30 days of the model year). The agency stated:

The term ''control'' a used in 32902(a)(4) is not defined elsewhere in Chapter 329 or the legislative history of the Chapter and its predecessor, the Motor Vehicle Information and Cost Savings Act. In past interpretations the agency has indicated that the term as used in the CAFE context may have the same definition as it has when used in a corporate law context. In the corporate law context, the issue of control is important for determining whether the controlling persons have violated any fiduciary duties to the corporation and other shareholders. Control in that sense refers to ownership of a large enough bloc of a company's stock to constitute effective voting control of the firm.

For the purposes of Chapter 329, control is important for determining a company's corporate average fuel economy and total production. For CAFE purposes, ''control'' is the ability to exercise a major influence over a company's average fuel economy and production. In addition to the ownership of a controlling bloc of stock, control for our purposes could be shown by control over the design and availability of certain models and other factors affecting production, sales mix and technological improvements.

(Letter from John Womack, Acting Chief Counsel, to Timothy Green of Ford Motor Company, dated September 19, 1996).

In sum, the statute provides that a manufacturer may earn credits when its fleet (consisting of every vehicle built by a manufacturer that controls it, is controlled by it or is under common control with it) exceeds the applicable CAFE standard for that model year. The statute anticipates that predecessors and successors will be included and that the Department would define such entities through regulation.

III. The Notice of Proposed Rulemaking

In January 2001, the agency published its NPRM relating to the rights and responsibilities of manufacturers in light of changes in corporate relationships. The NPRM sought to formalize the agency's position during the Chrysler enforcement action of the early 1990s and addressed a number of corollary issues.

The regulatory text proposed in the NPRM would have made successors responsible for any civil penalties arising out of fuel economy shortfalls

[2] The statutory language relating to predecessors and successor was added to the statute as part of the 1980 amendments. That same set of amendments extended the credit period from one year carry forward and carry back to three years forward and back. Although the phrase ''automobile manufactured by a manufacturer'' was in the statute previously, Congress added the definition of that phrase in 1990. We take all of those definitions and provisions into account in reaching our conclusions in this rulemaking.

incurred by predecessors, as well as any shortfall if the companies had combined within the last model year. Credits in existence at the time the predecessor/successor relationship was established could only be used to satisfy the existing shortfalls of each company prior to the formation of the new corporate structure. Thus, the successor's existing credits could only be used first to satisfy its existing shortfalls and the predecessor's credits could only be used first to satisfy its existing shortfalls. Remaining credits could be used to offset future shortfalls of the new corporate entity.

The proposed regulatory text also addressed companies within control relationships. It suggested that each company coming within a corporate control relationship within a model year should be jointly and severally liable for any CAFE liabilities incurred by any of the other companies coming within the control relationship within that model year. The NPRM then set forth a number of additional ''specifications'' attempting to define, in general terms, the use of credits and incurring of liabilities within control relationships. Each ''specification'' was subject to the agreement of the other manufacturers, the availability of the credits, and other general restrictions.

The proposal presented in the NPRM was built upon the following notion: ''Credits earned by a particular manufacturer are only 'available to be taken into account with respect to the average fuel economy of *that* manufacturer,' for any of the three model years before, or after, the model year in which the credits are earned'' [3] (emphasis added).

NHTSA historically allowed successor manufacturers to use a predecessor's existing credits to satisfy the newly merged corporation's CAFE liabilities acquired after the merger has been finalized. By the same token, successors are generally responsible for predecessors' liabilities, and NHTSA has maintained this is the case under the CAFE program. Thus, the only issue regarding credits in the NPRM was whether a successor is entitled to use the existing CAFE credits of either itself or its predecessors to satisfy the other's existing CAFE liabilities. In the NPRM, the agency tentatively was of the view that the successor could not.

This position was based on two premises, one legal and one policy-driven. First, NHTSA maintained that EPCA established a priority of credit carryover that requires all credits first be used by the manufacturer earning the credits to satisfy its existing CAFE liabilities and before remaining credits are carried forward for use by that same manufacturer. NHTSA then stated that permitting a successor to use its predecessor's remaining credits to satisfy other existing liabilities would permit the remaining credits to be carried forward and then carried back to a manufacturer that did not possess those credits when it incurred the liabilities the credits would satisfy. Although the agency did not conduct a rulemaking as Congress contemplated before taking a view, NHTSA's tentative position since the Chrysler enforcement action has been that the statute does not support such a result.

Second, while recognizing Congress' intent to add flexibility to the CAFE program when amending the statute in 1980, the agency expressed concern that a successor should not be permitted to ''merge'' the CAFE credits of its predecessor companies because it believed that ''permitting such use of credits would discourage energy conservation. For example, to the extent that a successor had been planning to exceed standards in the future to earn credits that could be carried back to cover pre-acquisition shortfalls, permitting the successor to use the predecessor's previously earned credits to cover those shortfalls would remove the incentive to exceed those standards.'' 66 FR 6528.

As noted above, the agency proposed a number of ''specifications'' covering a variety of situations in which questions relating to the use of credits and liabilities might arise. The NPRM proposed the following definitions:

- *Control relationship* means the relationship that exists between manufacturers that control, are controlled by, or are under common control with, one or more other manufacturers.
- *Identity* means the relationship between a predecessor and a successor during the time in which the successor owns 50 percent or more of the assets, based on valuation, that had belonged to the predecessor.
- *Predecessor* means a manufacturer whose rights have been vested in and whose burdens have been assumed by another manufacturer.
- *Successor* means a manufacturer who has become vested with the rights and assumed the burdens of another manufacturer.

As set forth in the NPRM, the definitions of ''successor'' or ''predecessor'' are intended to reflect the ordinary corporate law meaning of those terms.[4]

IV. Public Comments

The NPRM generated little public comment. Ford Motor Company raised fundamental objections to the definitional approach the agency had taken, pointing out that as applied to certain situations the approach created potentially unfair results inconsistent with the application of general principles of corporate law.

Ford claimed that a successor should not be responsible for all vehicles manufactured by the predecessor for the entire model year (defined as October 1–September 30). The company argued the NPRM would have forced companies to combine fleets before any control relationship had been established. Ford also noted that the NPRM stated its intent to be both simple and faithful to the overall statutory scheme and then argued that the agency had failed to do so. According to Ford, ''NHTSA's proposed rule short-circuits the statute and general principles of corporate successorship in its eagerness to achieve simplicity.''

Ford and DaimlerChrysler also contested the agency's proposed limitations on the use of predecessor's pre-existing CAFE credits. Ford argued: ''[I]n the final analysis, we see no reason why allowing a successor corporation to use pre-existing credits as it sees fit would be contrary to the intent of Congress. Credits are not being double-counted or being used for some improper purpose; no vehicles are being omitted from the CAFE calculations. The only real effect of this proposal would be to increase the likelihood that shortfalls will be subject to fines rather than covered with credits.''

V. Post-NPRM CAFE Considerations

Since the promulgation of the NPRM, the CAFE program has received considerable analytic attention. Particularly in response to Congressional concerns, studies of the CAFE program have emerged that help us better understand how policy decisions are likely to affect the goal of achieving energy independence.

Congress directed the National Academy of Sciences, in consultation

[3] This language mirrors that in EPCA prior to its codification in 1994. The codification was not intended to have any substantive effect.

[4] The Revised Model Business Corporation Act (at § 11.02), incorporates these general principles by stating that a ''survivor corporation becomes vested with all the assets of the corporation(s)/entity that merged into the survivor and becomes subject to their liabilities.'' The states in which the major motor vehicle makers are incorporated each apply the same concept in their respective statutes. *See, e.g.*, 8 Del.C. § 259 (Delaware), Cal. Corp. Code § 1107(a) (California) and N.J.S.A. 14A:10–6 (New Jersey).

with the Department of Transportation, to evaluate the CAFE program and make recommendations to improve it. The NAS conducted a detailed review of the policies underlying the CAFE program and made recommendations for better achieving those policies. A draft of the NAS Report was available to the Department in June 2001 and the final report was published in January 2002.

The NAS recommended ''the CAFE system, or any alternative regulatory system, should include broad trading of fuel economy credits. The committee believes a trading system would be less costly than the current CAFE system; provide more flexibility and options to the automotive companies; give better information on the cost of fuel economy changes to the private sector, public interests groups, and regulators; and provide incentives to all manufacturers to improve fuel economy. Importantly, trading of fuel economy credits would allow for more ambitious fuel economy goals than exist under the current CAFE system, while simultaneously reducing the economic cost of the program.''

More recently, the Congressional Budget Office released an issue brief focusing on the economic costs of CAFE standards and comparing them with the costs of a gasoline tax that would reduce gasoline consumption by the same amount. The CBO noted the NAS's finding that enhancing the transfer of credits would encourage the creation of credits because firms able to produce them would be able either to use them as needed or to sell them to other firms. The CBO estimated that fuel economy credit trading could cut the cost of a 3.8 mpg increase in the CAFE standards by 16 percent, down from $3.6 billion per year to $3 billion per year.[5]

VI. The Final Regulation

We have considered the issues raised in the NPRM in light of the comments filed by Ford Motor Company and DaimlerChrysler, applicable concepts of corporate law and the policy analyses provided by the National Academy of Sciences and the Congressional Budget Office. We have also reviewed the legislative history and considered the issues with an eye towards the Congressional intent of providing flexibility while enhancing overall fuel efficiency. While this regulation does not directly implicate credit trading, the policy considerations are similar and, as the NPRM suggests, relevant to deciding how best to achieve the overall intent of the CAFE program.

Based on our review and consideration of all this information, we have decided to expand our initial stance on carry back credits so as to allow a successor to use a predecessor's existing credits to satisfy the successor's existing liabilities and vice versa. As proposed in the NPRM, the successor will be liable for all of the predecessor's liabilities and credits not used to satisfy existing liabilities may be used to satisfy subsequent liabilities, consistent with statutory requirements. We have also decided to assess a successor's CAFE assets and liabilities for the full model year during which the corporate merger occurred. In those instances in which the change in corporate relationships did not result in the establishment of a successor/predecessor relationship, but rather in a lesser form of corporate control, the corporations are free to determine which corporation will be responsible for the model year allocation of penalties, as long as they file a contract detailing respective responsibilities with NHTSA prior to the end of the model year.

We no longer find tenable the proposed position we had taken limiting a successor corporation's right to use CAFE credits earned by a predecessor corporation. As indicated above, the proposed position was based on two premises, one policy and one legal. The policy premise was a statement that permitting a successor corporation to use the CAFE credits of its predecessor corporation would not encourage CAFE credit building. Upon further consideration, we do not believe our tentative policy premise regarding incentives to earn additional credits is a valid reason for limiting successor corporations' ability to use CAFE credits earned by a predecessor.

Further, our preliminary legal analysis did not fully consider all the applicable statutory language nor did it apply the general corporate law principles it sought to instill in the definitions. The legal premise was explained in our proposal as an outgrowth of the statutory provision that credits earned by a particular manufacturer are ''only available to be taken into account with respect to the average fuel economy of that manufacturer.'' We proposed to conclude that a successor corporation could not be considered to be that manufacturer with respect to the predecessor corporation, and so the statute would prohibit the successor corporation from using CAFE credits earned by a predecessor corporation to address CAFE shortfalls the successor corporation had before it acquired the predecessor.

We also proposed to define successors and predecessors in accordance with general principles of corporate law. Yet, even while doing so, we proposed a tentative conclusion different than the one that would result from applying those definitions and the same general principles. Under ordinary principles of corporate law, the reference to that manufacturer would not be read as prohibiting a successor from putting itself in the position of a predecessor corporation. Nor did we consider the import of the statutory phrase ''automobiles manufactured by a manufacturer'' when developing our preliminary analysis.

The agency proposed a reading of the CAFE statute contrary to ordinary principles of corporate law based on our preliminary policy conclusion that permitting the normal application of successor/predecessor principles of corporate law would frustrate the policies underlying the CAFE statute. In such circumstances, the proposed interpretation of the statute was intended to ensure that the underlying policies of the law were effectuated. However, we have now concluded that our policy view as to the impact of our reading of the statute does not in fact further the goals of the CAFE statute. Accordingly, we have no reason to read the CAFE statute in a way that is contrary to general principles of corporate law and we are not doing so in this final regulation.

A. Definitions

The NPRM proposed four definitions: Control relationship, Successor, Predecessor and Identity. The comments did not take issue with these definitions, but did object to the agency's proposal regarding the use of credits upon corporate restructurings. As explained in the NPRM, the term ''identity'' was proposed solely to provide structure to the agency's proposal that credits earned by a company that subsequently becomes part of another should expire and no longer be available to the acquiring manufacturer.

We are adopting in this Final Rule definitions of the terms ''successor'', ''predecessor'' and ''control relationship'' as proposed in the NPRM. As amended in 1980, the EPCA specifically directed the agency to develop regulations to include successors and predecessors within the structure of manufacturer's carry-back and carry-forward CAFE credit plans. The proposed definitions incorporate into that regulatory structure the

[5] The CBO estimated that CAFE standards would need to increase by 3.8 mpg (to 31.3 mpg for passenger cars and 24.5 mpg for light trucks) in order to reduce the amount of gasoline consumed by new vehicles by 10 percent.

common definition of successors and predecessors used in corporate law, providing successors with the rights and burdening them with the liabilities of their predecessors.

We believe it is necessary to define a control relationship because in many instances manufacturers are engaged in the corporate operations of another manufacturer to such an extent that they may have control over vehicle design or production but do not have so much control as to establish the successor/predecessor relationship contemplated under corporate law. We have decided against defining the term ''identity'' because under today's rule, the successor is not limited in using credits generated by the predecessor or in satisfying the predecessor's CAFE liabilities. To the extent a non-successor/predecessor control relationship is established, the allocation of rights and liabilities will be governed by contract.

The Final Rule also includes the following provision to help implement these definitions:

• ''Reporting Corporate Transactions.'' Manufacturers who have entered into written contracts transferring rights and responsibilities such that a different manufacturer owns the controlling stock or exerts control over the design, production or sale of automobiles to which a Corporate Average Fuel Economy standard applies shall report the contract to the agency as follows:

(a) The manufacturers must file a certified report with the agency affirmatively stating that the contract transfers rights and responsibilities between them such that one manufacturer has assumed a controlling stock ownership or control over the design, production or sale of vehicles. The report must also specify the first full model year to which the transaction will apply.

(b) The manufacturers may seek confidential treatment for information provided in the certified report in accordance with 49 CFR Part 512.

B. CAFE Credits

1. Legal Considerations

NHTSA has been provided with wide latitude to confer rights and develop constraints within the context of the successor/predecessor relationship. In light of this broad statutory authority, we have determined that our previous interpretation of § 32903 as prohibiting successor corporations from using a predecessor's existing credits to satisfy the successor's existing liability is too narrow.

The fuel economy credit provisions are set forth in 49 U.S.C. 32903, Credits for exceeding average fuel economy standards. Paragraph (a) of this section reads as follows:

(a) Earning and period for applying credits. When the average fuel economy of passenger automobiles manufactured by a manufacturer in a particular model year exceeds an applicable average fuel economy standard under section 32902(b)–(d) of this title (determined by the Secretary of Transportation without regard to credits under this section), the manufacturer earns credits. The credits may be applied to—

(1) Any of the 3 consecutive model years immediately before the model year for which the credits are earned; and

(2) To the extent not used under clause (1) of this subsection, any of the 3 consecutive model years immediately after the model year for which the credits are earned.

The language of the statute suggests that a manufacturer may use credits in any manner it chooses as long as existing liabilities are first satisfied and, potentially, those credits are not sold or otherwise traded to another manufacturer.[6] However, the language of § 32903 changed when the predecessor Motor Vehicle Information and Cost Savings Act, which was codified into § 32903 by Pub. L. 103–272 (July 5, 1994). Section 1(a) of that law stated that the laws being codified were being done so ''without substantive change.'' Therefore, it is appropriate to look to the language of the earlier statute when determining whether Congress intended to compel the agency to further restrict manufacturer use of credits.

Section 502(l)(1)(B) of the Motor Vehicle Information and Cost Savings Act stated:

Whenever the average fuel economy of the passenger automobiles manufactured by a manufacturer in a particular model year exceeds an applicable average fuel economy standard * * *, such manufacturer shall be entitled to a credit calculated under subparagraph (C), which—

(i) Shall be available to be taken into account with respect to the average fuel economy of that manufacturer for any of the three consecutive model years immediately prior to the model year in which such manufacturer exceeds such applicable average fuel economy standard, and

(ii) To the extent that such credit is not so taken into account pursuant to clause (i), shall be available to be taken into account with respect to the average fuel economy of that manufacturer for any of the three consecutive model years immediately following the model year in which such manufacturer exceeds such applicable average fuel economy standard.

NHTSA has historically maintained that this language of the Motor Vehicle Information and Cost Savings Act means that a credit earned by a particular manufacturer (or group of related manufacturers) is only available to be taken into account with respect to the average fuel economy of that manufacturer (or group of related manufacturers). In the NPRM (as well as in previous agency articulations of the issue), NHTSA maintained that this language allows only a manufacturer exercising control at the time the credit is earned to use the credit to satisfy a contemporaneous or preexisting liability.

However, support for this position cannot be found in the 1980 amendments to the statute that codified this provision, or indeed to its predecessor language in EPCA. Additionally, this position largely ignores the fact that the 1980 amendments, which adopted not only this language but amended the definition of a manufacturer to include successor/predecessor relationships which were to be defined by NHTSA, were made to increase the degree of manufacturer flexibility while retaining the overall intent of the original statute to promote fuel efficiency. Thus, in defining the terms ''successor'' and ''predecessor'' consistent with Congress' intent at the time, we must look not only to the overarching goal of improving fuel efficiency, but more specifically to the goal of increasing manufacturing flexibility.

CAFE standards were established in 1975 as part of a far-reaching piece of legislation designed to address growing dependency on foreign oil and dwindling domestic petroleum reserves. Congress determined that the best way to encourage the automotive sector to increase the fuel efficiency of its vehicles was to create a system under which manufacturers would be required to meet federally established fuel standards. These standards were to be sufficiently rigorous to promote the development of more fuel efficient vehicles, but not so rigorous as to result in the loss of employment in the automotive sector, then responsible for 1 out of every 9 jobs in the U.S. economy.

As part of that legislation, Congress established a limited credit program in which a manufacturer could earn credits for enhanced fuel efficiency. As part of its enforcement program, the Department of Transportation would determine a manufacturer's liability and

[6] The question as to whether the statute permits credit trading, either between manufacturers or between classes of light trucks, was raised in the agency's Advanced Notice of Proposed Rulemaking exploring CAFE reform options. *See* 68 FR 74908 (December 29, 2003).

then would determine whether the manufacturer had earned any credits the previous year. If so, those credits were to be applied to the liability and penalties would be reduced by existing credits on a one-to-one basis. Any credits not used to satisfy a previous year's liabilities could be retained to meet liabilities incurred in the following year, either as a direct reduction if penalties had not yet been paid, or as a refund.

A manufacturer was defined as ''any person engaged in the business of manufacturing'' and the Secretary of Transportation was ordered to ''prescribe rules for determining, in cases in which more than one person is the manufacturer of an automobile, which person is to be treated as the manufacturer'' 15 U.S.C. 2002 (1976 Ed.).

Five years later, domestic U.S. automobile manufacturers were in the midst of financial difficulties and one major manufacturer, Chrysler, was on the verge of bankruptcy. Congress decided the CAFE program needed to be amended so as to provide vehicle manufacturers with greater flexibility, thus decreasing the likelihood of layoffs in the automotive sector, while generally retaining the program's commitment to increased fuel efficiency.

As part of the 1980 amendments, Congress took several steps to increase manufacturer flexibility. First, it allowed low-volume manufacturers to request alternative CAFE standards for two or more years and exempted them from reporting requirements. Second, it provided additional flexibility in the CAFE standards for foreign manufacturers so as to encourage them to expand manufacturing operations into the U.S. Finally, and most importantly for this discussion, it provided manufacturers with greater flexibility in achieving CAFE standards in any particular year by allowing manufacturers to earn credits that could be used to offset liabilities incurred up to three years before and three years after the credits were earned.

Manufacturers without credits that discovered they were likely to end the model year with a shortfall were permitted to file a plan with NHTSA demonstrating how they would make up any shortfall within three years. Unless the plan was deemed unreasonable, NHTSA was to approve the plan, and penalties were deferred until the plan failed to produce the anticipated credits. As part of this legislation, the term ''manufacturer'' was amended to ''include[s] any predecessor or successor of such a manufacturer to the extent provided under rules which the Secretary shall prescribe.''

Under the scheme proposed in the NPRM, a successor's use of the CAFE credits of its predecessor corporations would be limited, placing a significant constraint on manufacturer flexibility. Yet, the successor would be held responsible for any CAFE liabilities of its predecessor companies. A successor corporation could well find itself responsible for previously incurred CAFE obligations, but without previously earned CAFE credits. Despite the statutory language, a ''manufacturer'' would no longer include the concept of successor and predecessor corporations as generally defined in corporate law. Instead, it would be subject to a different set of rules applicable only in the context of the CAFE program.

Further, the preliminary analysis set forth in the NPRM focused only on the statutory term ''manufacturer,'' but did not give due consideration to the import of the statutory term ''automobiles manufactured by a manufacturer.'' This latter term is the fulcrum of determining the CAFE performance of a particular vehicle fleet and, by statute, incorporates any vehicle manufactured by a manufacturer in a control relationship with another manufacturer. By definition, then, the statute anticipates including in a manufacturer's fleet vehicles sold by manufacturers other than the particular corporate entity that produced or sold the vehicle when there is a control relationship.

We believe it is unlikely that Congress expected the agency to develop a scheme under which there is no incentive to earn credits other than to make up for existing shortfalls. Nor is it a policy encouraging the development and sale of vehicle fleets exceeding applicable CAFE standards.

Indeed, as discussed above, Congress adopted amendments to the CAFE statute to provide for three-year carry-forward and carry-back compliance plans using credits to offset liabilities expressly to give manufacturers additional flexibility. Rather, it is more likely that Congress was well aware when it enacted provisions to extend CAFE credit planning that compliance with CAFE standards was premised on the fleet of ''automobiles manufactured by a manufacturer,'' and further that any individual fleet would include vehicles manufactured by companies in various control relationships. Congress chose to provide additional flexibility to manufacturers to meet CAFE standards while maintaining the ability of a manufacturer in a control relationship to calculate its corporate average fuel economy with regard to the automobiles sold by companies within that control relationship.

2. Policy Considerations

The NPRM was premised on the agency's preliminary belief that tight constraints on existing credits are necessary to encourage vehicle fleets to exceed applicable CAFE standards. The agency reasoned that allowing the transfer of CAFE credits as part of a corporate merger would not encourage good CAFE performance. Indeed, the agency believed that permitting the transfer of CAFE credits would discourage the development and sale of more fuel-efficient vehicles.

The NPRM offered the following example: ''To the extent that a successor had been planning to exceed standards in the future to earn credits that could be carried back to cover pre-acquisition shortfalls, permitting the successor to use the predecessor's previously earned credits to cover those shortfalls would remove the incentive to exceed those standards.'' 66 FR 6528. It did not, however, consider the incentive to companies to exceed standards in order to gain assets valuable to potential investors and acquirers.

The agency issued the NPRM without the benefit of the policy input and economic analysis developed during the NAS's review of the CAFE program. The NAS study is instructive in that it raises the prospect that treating credits as an asset that is potentially of value to others provides an increased incentive to create the asset. The preliminary conclusions stated in the NPRM did not consider that a successor company's ability to use CAFE credits might create valuable assets enhancing the value of a corporation to another.

In the NPRM, the agency only considered the prospect encountered in the earlier Chrysler enforcement action, *i.e.,* the successor possesses a shortfall that the predecessor's credits can alleviate. It did not consider the reverse situation in which a credit-rich manufacturer is acquiring a predecessor with sizeable CAFE liability. Ford raised this scenario in its comments. Ford offered the following example:

> If A, whose fleet is CAFE-positive, acquires B, whose fleet is CAFE-negative, it may not be possible for A to generate sufficient credits in the next three years to cover B's pre-existing shortfalls. A's product plans for the next three model years are basically set, and there is little A can do in the short term to improve its CAFE performance. Nor can A do anything to change B's CAFE-negative past. As a result, A may have no choice but to address B's shortfall by paying a fine—even

though A may have enough past credits to offset B's past shortfall. This outcome may add to the coffers of the U.S. Treasury, but it unfairly penalizes A and does nothing to serve CAFE's overall purpose of promoting energy conservation.

While Ford expressed its concerns in terms of equity, we believe the ability of a successor corporation to use its existing credits actually has the potential to encourage greater fuel efficiency. That is to say, a manufacturer has an incentive to earn credits above and beyond its actual need because a credit-rich manufacturer can use excess credits to reduce the cost of merging with an otherwise attractive manufacturer that is laden with CAFE liabilities.

The concern expressed in the NPRM was also premised on the notion that allowing a successor corporation to use credits by one of its predecessors to offset the liabilities of any other predecessor amounted to trading credits between manufacturers. This concern was premised on a preliminary belief that allowing a successor to use within the control relationship the credits earned by one of its constituent parts would ''retroactively'' apply credits to a ''manufacturer'' that did not earn them.

After reviewing the comments and applicable corporate law, we find that acknowledging the purchase and sale of corporate assets, including CAFE credits, or corporate liabilities, including CAFE obligations, does not amount to trading credits between manufacturers. Nor does it imply any retroactive application of credits. At any particular point of time, CAFE responsibility is gauged in accordance with the corporate structure in existence at that time.

If a company purchases the assets and liabilities of another manufacturer, in accordance with the contract between them, the successor manufacturer may be entitled to use the assets of its constituent parts as one company. If the successor has purchased the assets and liabilities of its constituent parts, it is entitled (consistent with its contract) to use those assets and liabilities to address the responsibilities of the company as they exist as of that time. For example, if Company A has CAFE liability in Year 1 and purchases the assets and liabilities of Company B midway through Year 2, combined Company C's assets and liabilities for CAFE purposes are determined with regard to its position, in terms of its CAFE responsibilities, as of Year 3. If the contract provides, combined Company C incurs all the liabilities and is entitled to all of the assets of its predecessor corporations. If within the three-year carry-forward carry-back time frame, the company is responsible for the liabilities and may use the credits applicable to the corporation as a whole.

Consistent with the express statutory terms construing a manufacturer's corporate average fuel economy in terms of the ''automobiles manufactured by a manufacturer,'' and consistent with general principles of corporate law, a successor corporation is entitled to use the assets and is responsible for the liabilities of its predecessor corporations as defined by their contractual relations. This includes the rights and responsibilities of companies in a position of control over, or who are controlled by, another corporation.

Our purpose, as set forth in the NPRM, is to encourage CAFE compliance in the vehicle fleet as a whole to reduce consumption of gasoline and to enhance the nation's energy independence. We now believe that the ability of successor corporations to use more freely the CAFE credits earned by each of their predecessor corporations enhances the value of those companies to others. And, perhaps more compelling, the ability of a successor corporation to use its own credits to satisfy the liabilities of a predecessor provides the successor with a valuable mechanism to reduce the overall cost of the acquisition. Thus, the effect of today's rule is to encourage companies on the one hand to maximize the number of credits it earns and on the other to join in corporate structures that help advance overall fleet fuel economy.

The NPRM also addressed other types of changes in corporate relationships, including the potential for corporate relations to dissolve. We believe our regulation properly addresses such dissolutions by focusing on the contractual agreements and by applying (as suggested in the NPRM) general principles of corporate law. Thus, we have included in the Final Rule a provision simply stating that dissolutions—like combinations—are subject to contractual agreements and should be available for use consistent with general principles of corporate law. We have, therefore, simplified the final regulation without altering the basic policy underlying the need to enhance energy independence.

C. Acquisitions During a Model Year

In the NPRM, we proposed to specify that ''(i)f one manufacturer becomes the successor of another manufacturer during a model year, all of the vehicles produced by those manufacturers during the model year are treated as though they were manufactured by the same manufacturer.'' The proposed specification also provided that ''(a) manufacturer is considered to have become the successor of another manufacturer during a model year if it is the successor on September 30 of the corresponding calendar year and was not the successor for the preceding model year.''

Ford argued that the proposed specification ''is clearly inconsistent with the CAFE statute.'' It noted that, as currently codified, 49 U.S.C. 32901(4) defines the term ''automobile manufactured by a manufacturer'' as including every automobile manufactured by a person that controls, is controlled by, or is under common control with a manufacturer * * *''

Ford argued that a problem with NHTSA's proposed rule is that it forces manufacturers to combine fleets before any control relationship has even been established. It cited the example of A's acquiring or taking control of B on August 1, 2002. Under the proposed rule, the fleets of A and B would be combined for all of model year 2002. However, Ford argued that it is improper to force A to include in its model year 2002 fleet a vehicle produced by B on October 2001.

Ford noted the agency's statement that fuel economy standards must apply to ''particular model years as a whole'' and not to ''separate parts of a model year.'' It stated that the agency is worried that, absent such a provision, ''one or both manufacturers would have two separate CAFE values * * * for the same model year.'' Ford claimed this is an implausible assumption. According to Ford, simply put, both manufacturers would file CAFE reports; manufacturer A would include those models produced after ''control'' was established and manufacturer B would include those vehicles produced before ''control'' was established. This would be the case even if B ceased to exist after the ''control'' date.

That company argued that a scheme which pretends that Manufacturer A ''controls'' Manufacturer B for an entire model year, even though the actual control relationship existed only for the last two months (or even the very last day) of that model year, is contrary to the statutory scheme. Ford argued that in setting up the ''control'' criterion, Congress intended to count in a manufacturer's CAFE fleet only those vehicles for which the manufacturer could fairly be held responsible. Ford argued that the fairest and most transparent way to address the issue is to have A take responsibility for only those vehicles produced by B after the control relationship is established.

We disagree. First, CAFE compliance and any remaining obligations are based on the total volume of vehicles sold during the course of the model year and are not determined until the end of the model year. (49 U.S.C. 32903(b)(1)) No administrative mechanism currently exists to separate CAFE compliance to account for mid-year changes in corporate relationships and we see no need to craft one. Under today's rule, an acquiring corporation inherits all CAFE liabilities and credits of the predecessor corporation for a period dating back three years. These assets and liabilities would be considered by both parties when negotiating the transfer of corporate interests, as would any assets and liabilities.

Accordingly, we do not believe that the successor corporation is in any way injured by the existing administrative structure. A successor corporation may, upon acquisition, take steps to mitigate any projected CAFE shortfall for its total fleet for that model year, including filing a plan to make up any shortfalls within the next three model years. Given today's determination that a predecessor's CAFE liabilities need not be satisfied solely through the payment of penalties, there is no imposition of an unreasonable burden.

Further, to ensure that the agency properly allocates CAFE credits and liabilities to the appropriate manufacturer in accordance with their corporate transaction, we have decided to include in the regulation a provision similar to that used in many of our Federal Motor Vehicle Safety Standards (FMVSS). New or upgraded FMVSS often include a ''phase-in'' schedule during which the standard becomes applicable to an increasing percentage of each manufacturer's new vehicle fleet. The agency has accounted for corporate transactions in this context by providing that a vehicle will be attributable as between manufacturers in accordance with express written contracts submitted to NHTSA. (*See, e.g.,* FMVSS 225 § 14.2.2 and 49 CFR part 596.6(b)(3)).

We have included a similar provision in this Final Rule to help the agency identify when a corporate transaction has resulted in the transfer of rights and responsibilities between manufacturers. To effect the corporate transaction, manufacturers are to submit a certified report to the agency stating that the transaction has or will transfer controlling stock interest or otherwise vest a new corporate entity with control over the design, production or sales of automobiles manufactured by another manufacturer.

Likewise, to the extent that a group of manufacturers within a control relationship allocates the group's CAFE credits and liabilities among the manufacturers within the group, the group of manufacturers shall file a copy of the agreement controlling the allocation at the end of each model year. In this way, NHTSA will be better able to administer its CAFE compliance program. All manufacturers in a control relationship shall be jointly and severally liable for any CAFE liabilities that are not collected from the manufacturer allocated responsibility for those liabilities.

VII. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document is not economically significant. It was reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action has been determined to be significant under the Department's regulatory policies and procedures, given the public interest in the automotive fuel economy program.

The new regulation does not create any new obligations, other than the obligation to file with NHTSA evidence of a contractual relationship allocating CAFE credits and liabilities among various parties exercising control over the manufacture of a fleet of vehicles. It expands upon the same positions concerning predecessors and successors as we have previously taken in interpretation letters by permitting existing credits to be used to satisfy the existing liabilities of either party to a transaction establishing a successor/predecessor relationship.

As discussed earlier in this notice, if we did not adopt regulations governing the use of CAFE credits by predecessors and successors, a predecessor's unused credits would simply expire, since the only manufacturer that could use them would no longer exist. Similarly, there would be no way of offsetting a predecessor's remaining CAFE shortfalls in the absence of some provision concerning successors. The successor would thus be required to pay the predecessor's penalties, a responsibility which it assumed with the rest of the predecessor's obligations, but would have no ability to earn future credits to offset the predecessor's shortfalls.

To address this inequity, the regulation gives the successor all the rights the predecessor had with respect to the use of preexisting credits and the ability to earn future credits.

The provisions concerning the rights and responsibilities of manufacturers in other situations in which there have been changes in corporate relationships, *e.g.,* changes in control, are essentially a statement of our interpretation of the statute and reflect the same principles as the provisions relating to predecessors and successors.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) I hereby certify that proposed rule does not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. As discussed above, the regulation does not create any new obligations but simply adopts the same positions concerning predecessors and successors as we have previously taken in interpretation letters. Similarly, the provisions concerning the rights and responsibilities of manufacturers in other situations in which there have been changes in corporate relationships, *e.g.,* changes in control, are essentially a statement of our interpretation of the statute and reflect the same principles as the provisions relating to predecessors and successors. Moreover, as a practical matter, the acquiring corporations most likely to be affected by this regulation are not small businesses.

C. National Environmental Policy Act

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

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule has no substantial effects on the States, or on the current Federalism-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a

written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). The rule does not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually.

F. Executive Order 12778 (Civil Justice Reform)

This rule does not have any retroactive effect. However, as we noted in the NPRM, we would, as a practical matter, consider the regulation in any enforcement action regarding predecessors and successors that involved conduct that occurred before the regulation became effective.

As discussed earlier, the regulation does not create any new obligations but expands the same positions concerning predecessors and successors as we have previously taken in interpretation letters and have previously applied in our administration of the statute. If we did not adopt special provisions governing the use of CAFE credits by predecessors and successors, a predecessor's unused credits would simply expire, since the only manufacturer that could use them would no longer exist. Similarly, there would be no way of offsetting a predecessor's remaining CAFE shortfalls in the absence of some provision concerning successors.

The rule addresses this inequity and gives the successor all the rights the predecessor had with respect to credits.

We would similarly consider the regulation in any enforcement action regarding other situations in which there have been changes in corporate relationships, *e.g.*, changes in control, that involved conduct that occurred before the regulation became effective. However, the provisions are essentially a statement of our interpretation of the statute.

States are preempted from promulgating laws and regulations contrary to the provisions of this rule. The rule does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

The agency has prepared the necessary paperwork under the Paperwork Reduction Act and submitted it to the Office of Management and Budget. PRA clearance is necessary because the final regulation includes a provision requiring the submission of agreements between companies in certain circumstances.

H. Regulation Identifier Number (RIN)

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

I. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. This regulatory action does not meet either of those criteria.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [7] in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. This requirement is not relevant to this rulemaking action.

List of Subjects in 49 CFR Part 534

Fuel economy, Motor vehicles.

■ In consideration of the foregoing, chapter V of title 49 of the Code of Federal Regulations is amended by adding a new Part 534 to read as follows:

PART 534—RIGHTS AND RESPONSIBILITIES OF MANUFACTURERS IN THE CONTEXT OF CHANGES IN CORPORATE RELATIONSHIPS

534.1 Scope.
534.2 Applicability.
534.3 Definitions.
534.4 Successors and predecessors.
534.5 Manufacturers within control relationships.
534.6 Reporting corporate transactions.
535.7 Situations not directly addressed by this part.

Authority: 49 U.S.C. 32901; delegation of authority at 49 CFR 1.50.

§ 534.1 Scope.

This part defines the rights and responsibilities of manufacturers in the context of changes in corporate relationships for purposes of the automotive fuel economy program established by 49 U.S.C. Chapter 329.

§ 534.2 Applicability.

This part applies to manufacturers of passenger automobiles and non-passenger automobiles.

§ 534.3 Definitions.

(a) *Statutory definitions and terms.* All terms used in 49 U.S.C. Chapter 329 are used according to their statutory meaning.

(b) As used in this part—

''Control relationship'' means the relationship that exists between manufacturers that control, are controlled by, or are under common control with, one or more other manufacturers.

''Predecessor'' means a manufacturer whose rights have been vested in and whose burdens have been assumed by another manufacturer.

''Successor'' means a manufacturer that has become vested with the rights and assumed the burdens of another manufacturer.

§ 534.4 Successors and predecessors.

For purposes of the automotive fuel economy program, ''manufacturer'' includes ''predecessors'' and ''successors'' to the extent specified in paragraphs (a) through (d) of this section.

(a) Successors are responsible for any civil penalties that arise out of fuel economy shortfalls incurred and not satisfied by predecessors.

(b) If one manufacturer has become the successor of another manufacturer during a model year, all of the vehicles produced by those manufacturers during the model year are treated as though they were manufactured by the same manufacturer. A manufacturer is considered to have become the successor of another manufacturer during a model year if it is the successor on September 30 of the corresponding calendar year and was not the successor for the preceding model year.

(c) Credits earned by a predecessor may be used by a successor, subject to availability of the credits and the general three-year restriction on carrying credits forward and the general

[7] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specifications and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.''

three-year restriction on carrying credits backward.

(d) Credits earned by a successor may be used to offset a predecessor's shortfall, subject to availability of the credits and the general three-year restriction on carrying credits backward.

§ 534.5 Manufacturers within control relationships.

(a) If a civil penalty arises out of a fuel economy shortfall incurred by a group of manufacturers within a control relationship, each manufacturer within that group is jointly and severally liable for the civil penalty.

(b) A manufacturer is considered to be within a control relationship for an entire model year if and only if it is within that relationship on September 30 of the calendar year in which the model year ends.

(c) Credits of a manufacturer within a control relationship may be used by the group of manufacturers within the control relationship to offset shortfalls, subject to the agreement of the other manufacturers, the availability of the credits, and the general three-year restriction on carrying credits forward or backward.

(d) If a manufacturer within a group of manufacturers is sold or otherwise spun off so that it is no longer within that control relationship, the manufacturer may use credits that were earned by the group of manufacturers within the control relationship while the manufacturer was within that relationship, subject to the agreement of the other manufacturers, the availability of the credits and the general restriction on carrying credits forward or backward.

(e) Agreements among manufacturers in a control relationship related to the allocation of credits or liabilities addressed by this section shall be filed with the agency within 60 days of the end of each model year in the same form as specified in section 534.6. The manufacturers may seek confidential treatment for information provided in the certified report in accordance with 49 CFR Part 512.

§ 534.6 Reporting corporate transactions.

Manufacturers who have entered into written contracts transferring rights and responsibilities such that a different manufacturer owns the controlling stock or exerts control over the design, production or sale of automobiles to which a Corporate Average Fuel Economy standard applies shall report the contract to the agency as follows:

(a) The manufacturers must file a certified report with the agency affirmatively stating that the contract transfers rights and responsibilities between them such that one manufacturer has assumed a controlling stock ownership or control over the design, production or sale of vehicles. The report must also specify the first full model year to which the transaction will apply.

(b) Each report shall—

(i) Identify each manufacturer;

(ii) State the full name, title, and address of the official responsible for preparing the report;

(iii) Identify the production year being reported on;

(iv) Be written in the English language; and

(v) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

(c) The manufacturers may seek confidential treatment for information provided in the certified report in accordance with 49 CFR part 512.

§ 534.7 Situations not directly addressed by this part.

To the extent that this part does not directly address an issue concerning the rights and responsibilities of manufacturers in the context of a change in corporate relationships, the agency will make determinations based on interpretation of the statute and the principles reflected in the part.

Issued on: December 20, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–28237 Filed 12–27–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[I.D. 122104C]

Notification of U.S. Fish Quotas and an Effort Allocation in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area

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

ACTION: Final rule; notification of U.S. fish quotas and an effort allocation.

SUMMARY: NMFS announces that fish quotas and an effort allocation are available for harvest by U.S. fishermen in the Northwest Atlantic Fisheries Organization (NAFO) Regulatory Area. This action is necessary to make available to U.S. fishermen a fishing privilege on an equitable basis.

DATES: All fish quotas and the effort allocation are effective January 1, 2005, through December 31, 2005. Expressions of interest regarding U.S. fish quota allocations for all species except 3L shrimp will be accepted throughout 2005. Expressions of interest regarding the U.S. 3L shrimp quota allocation and the 3M shrimp effort allocation will be accepted through January 12, 2005.

ADDRESSES: Expressions of interest regarding the U.S. effort allocation and quota allocations should be made in writing to Patrick E. Moran in the NMFS Office of Sustainable Fisheries, at 1315 East-West Highway, Silver Spring, MD 20910 (phone: 301–713–2276, fax: 301–713–2313, e-mail: *pat.moran@noaa.gov*).

Information relating to NAFO fish quotas, NAFO Conservation and Enforcement Measures, and the High Seas Fishing Compliance Act (HSFC) Permit is available from Sarah McLaughlin, at the NMFS Northeast Regional Office at One Blackburn Drive, Gloucester, Massachusetts 01930 (phone: 978–281–9279, fax: 978–281–9135, e-mail: *Sarah.McLaughlin@noaa.gov*) and from NAFO on the World Wide Web at *http://www.nafo.ca*.

FOR FURTHER INFORMATION CONTACT: Patrick E. Moran, 301–713–2276.

SUPPLEMENTARY INFORMATION:

Background

NAFO has established and maintains conservation measures in its Regulatory Area that include one effort limitation fishery as well as fisheries with total allowable catches (TACs) and member nation quota allocations. The principal species managed are cod, flounder, redfish, American plaice, halibut, capelin, shrimp, and squid. At the 2004 NAFO Annual Meeting, the United States received fish quota allocations for three NAFO stocks and an effort allocation for one NAFO stock to be fished during 2005. The species, location, and allocation (in metric tons or effort) of these U.S. fishing opportunities, as found in Annexes I.A, I.B, and I.C of the 2005 NAFO Conservation and Enforcement Measures, are as follows:

(1) Redfish	NAFO Division 3M	69 mt
(2) Squid (*Illex*)	NAFO Subareas 3 & 4	453 mt
(3) Shrimp	NAFO Division 3L	144 mt
(4) Shrimp	NAFO Division 3M	1 vessel/ 100 days

Additionally, U.S. vessels may be authorized to fish any available portion

of the 1,000 mt allocation of oceanic redfish in NAFO Subarea 2 and Divisions 1F and 3K allocated to NAFO members that are not also members of the Northeast Atlantic Fisheries Commission. Fishing opportunities may also be authorized for U.S. fishermen in the ''Others'' category for: Division 3LNO yellowtail flounder (76 mt); Division 3NO white hake (500 mt); Division 3LNO skates (500 mt); and Division 3O redfish (100 mt). Procedures for obtaining NMFS authorization are specified below.

U.S. Fish Quota Allocations

Expressions of interest to fish for any or all of the U.S. fish quota allocations and ''Others'' category allocations in NAFO will be considered from U.S. vessels in possession of a valid High Seas Fishing Compliance (HSFC) permit, which is available from the NMFS Northeast Regional Office (see **ADDRESSES**). All expressions of interest should be directed in writing to Patrick E. Moran (see **ADDRESSES**). Letters of interest from U.S. vessel owners should include the name, registration, and home port of the applicant vessel as required by NAFO in advance of fishing operations. In addition, any available information on intended target species and dates of fishing operations should be included. To ensure equitable access by U.S. vessel owners, NMFS may promulgate regulations designed to choose one or more U.S. applicants from among expressions of interest.

Note that vessels issued valid HSFC permits under 50 CFR part 300 are exempt from multispecies permit, mesh size, effort-control, and possession limit restrictions, specified in 50 CFR parts 648.4, 648.80, 648.82 and 648.86, respectively, while transiting the U.S. exclusive economic zone (EEZ) with multispecies on board the vessel, or landing multispecies in U.S. ports that were caught while fishing in the NAFO Regulatory Area, provided:

(1) The vessel operator has a letter of authorization issued by the Regional Administrator on board the vessel;

(2) For the duration of the trip, the vessel fishes, except for transiting purposes, exclusively in the NAFO Regulatory Area and does not harvest fish in, or possess fish harvested in, or from, the U.S. EEZ;

(3) When transiting the U.S. EEZ, all gear is properly stowed in accordance with one of the applicable methods specified in 50 CFR part 648.23(b); and

(4) The vessel operator complies with the HSFC permit and all NAFO conservation and enforcement measures while fishing in the NAFO Regulatory Area.

U.S. 3M Effort Allocation

Expressions of interest in harvesting the U.S. portion of the 2005 NAFO 3M shrimp effort allocation (1 vessel/100 days) will be considered from owners of U.S. vessels in possession of a valid HSFC permit. All expressions of interest should be directed in writing to Patrick E. Moran (see **ADDRESSES**).

Letters of interest from U.S. vessel owners should include the name, registration and home port of the applicant vessel as required by NAFO in advance of fishing operations. In the event that multiple expressions of interest are made by U.S. vessel owners, NMFS may promulgate regulations designed to choose one U.S. applicant from among expressions of interest.

NAFO Conservation and Management Measures

Relevant NAFO Conservation and Enforcement Measures include, but are not limited to, maintenance of a fishing logbook with NAFO-designated entries; adherence to NAFO hail system requirements; presence of an on-board observer; deployment of a functioning, autonomous vessel monitoring system; and adherence to all relevant minimum size, gear, bycatch, and other requirements. Further details regarding these requirements are available from the NMFS Northeast Regional Office, and can also be found in the current NAFO Conservation and Enforcement Measures on the Internet (see **ADDRESSES**).

Chartering Arrangements

In the event that no adequate expressions of interest in harvesting the U.S. portion of the 2005 NAFO 3L shrimp quota allocation and/or 3M shrimp effort allocation are made on behalf of U.S. vessels, expressions of interest will be considered from U.S. fishing interests intending to make use of vessels of other NAFO Parties under chartering arrangements to fish the 2005 U.S. quota allocation for 3L shrimp and/or the effort allocation for 3M shrimp. Under NAFO rules in effect through 2005, a vessel registered to another NAFO Contracting Party may be chartered to fish the U.S. effort allocation provided that written consent for the charter is obtained from the vessel's flag state and the U.S. allocation is transferred to that flag state. NAFO Parties must be notified of such a chartering operation through a mail notification process.

A NAFO Contracting Party wishing to enter into a chartering arrangement with the United States must be in full current compliance with the requirements outlined in the NAFO Convention and Conservation and Enforcement Measures including, but not limited to, submission of the following reports to the NAFO Executive Secretary: provisional monthly catches within 30 days following the calendar month in which the catches were made; provisional daily catches of shrimp taken from Division 3L; provisional monthly fishing days in Division 3M within 30 days following the calendar month in which the catches were made; observer reports within 30 days following the completion of a fishing trip; and an annual statement of actions taken in order to comply with the NAFO Convention. Furthermore, the United States may also consider a Contracting Party's previous compliance with the NAFO incidental catch limits, as outlined in the NAFO Conservation and Enforcement Measures, before entering into a chartering arrangement.

Expressions of interest from U.S. fishing interests intending to make use of vessels from another NAFO Contracting Party under chartering arrangements should include information required by NAFO regarding the proposed chartering operation, including: the name, registration and flag of the intended vessel; a copy of the charter; the fishing opportunities granted; a letter of consent from the vessel's flag state; the date from which the vessel is authorized to commence fishing on these opportunities; and the duration of the charter (not to exceed six months). More details on NAFO requirements for chartering operations are available from NMFS (see **ADDRESSES**). In addition, expressions of interest for chartering operations should be accompanied by a detailed description of anticipated benefits to the United States. Such benefits might include, but are not limited to, the use of U.S. processing facilities/personnel; the use of U.S. fishing personnel; other specific positive effects on U.S. employment; evidence that fishing by the chartered vessel actually would take place; and documentation of the physical characteristics and economics of the fishery for future use by the U.S. fishing industry.

In the event that multiple expressions of interest are made by U.S. fishing interests proposing the use of chartering operations, the information submitted regarding benefits to the United States will be used in making a selection. In the event that applications by U.S. fishing interests proposing the use of chartering operations are considered, all applicants will be made aware of the allocation decision as soon as possible.

Once the allocation has been awarded for use in a chartering operation, NMFS will immediately take appropriate steps to notify NAFO and transfer the U.S. 3L shrimp quota allocation and/or the 3M shrimp effort allocation to the appropriate Contracting Party.

After reviewing all requests for allocations submitted, NMFS may decide not to grant any allocations if it is determined that no requests meet the criteria described in this notice. All individuals/companies submitting expressions of interest to NMFS will be contacted if an allocation has been awarded. Please note that if the U.S. portion of the 2005 NAFO 3L shrimp quota allocation and/or 3M shrimp effort allocation is awarded to a U.S. vessel or a specified chartering operation, it may not be transferred without the express, written consent of NMFS.

Dated: December 22, 2004.

John H. Dunnigan,

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

[FR Doc. 04–28366 Filed 12–27–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 031119283–4001–02; I.D. 122204F]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for North Carolina

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

ACTION: Closure of commercial fishery.

SUMMARY: NMFS announces that the summer flounder commercial quota available to North Carolina has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in North Carolina for the remainder of calendar year 2004, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise North Carolina that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in North Carolina.

DATES: Effective 1800 hours, December 26, 2004, through 2400 hours, December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Jason Blackburn, Fishery Management Specialist, (978) 281–9326, e-mail *jason.blackburn@noaa.gov.*

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2004 calendar year was set equal to 16,920,000 lb (7,674,862 kg) (69 FR 2074, January 14, 2004). The percent allocated to vessels landing summer flounder in North Carolina is 27.44584 percent, resulting in a commercial quota of 4,643,836 lb (2,106,430 kg). The adjusted 2004 allocation was reduced to 4,163,464 lb (1,888,535 kg) due to research set-aside and quota overages from 2003. However, on March 9, 2004 (69 FR 10937), NMFS published notification of a commercial quota restoration of 451,595 lb (204,842 kg) to North Carolina increasing the commercial quota to 4,615,059 lb (2,093,377 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota has been harvested. NMFS then publishes a notification in the **Federal Register** to advise the state and to notify Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that North Carolina has harvested its quota for 2004.

The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 1800 hours, December 26, 2004, through 2400 hours, December 31, 2004, further landings of summer flounder in North Carolina by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2004 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 1800 hours, December 26, 2004, through 2400 hours, December 31, 2004, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in North Carolina for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: December 22, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–28365 Filed 12–22–04; 1:48 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 248
Tuesday, December 28, 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–2004–19943; Directorate Identifier 2004–NM–76–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 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 757–200 series airplanes. This proposed AD would require modifying the wiring of the test ground signal for the master dim and test system circuit in the flight compartment. This proposed AD is prompted by a report that the master dim and test system circuit does not have wiring separation of the test ground signal for redundant equipment in the flight compartment. We are proposing this AD to prevent a single fault failure during flight, which could result in test patterns instead of the selected radio frequencies showing on the communications panel. These conditions could adversely affect voice and transponder communication capability between the flightcrew and air traffic control, which could result in increased pilot workload.

DATES: We must receive comments on this proposed AD by February 11, 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. This docket number is FAA–2004–19943; the directorate identifier for this docket is 2004–NM–76–AD.

FOR FURTHER INFORMATION CONTACT: *Technical information:* Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6485; 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–2004–19943; Directorate Identifier 2004–NM–76–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 the master dim and test system circuit does not have wiring separation of the test ground signal for redundant equipment in the flight compartment on certain Boeing Model 757–200 series airplanes. This condition could allow a single fault to simulate a test condition in the annunciators, switches, and displays in the flight compartment. A

single fault failure could also simulate a test condition on the communications panels and show test patterns instead of the selected radio frequencies. The flightcrew must be aware of the selected radio frequencies used to communicate with air traffic control. If test patterns show on the communications panel during flight, it could adversely affect voice and transponder communication capability between the flightcrew and air traffic control, which could result in increased pilot workload.

Relevant Service Information

We have reviewed Boeing Service Bulletin 757–33–0050, Revision 2, dated December 4, 2003. The service bulletin describes procedures for modifying the wiring of the test ground signal for the master dim and test system circuit in the flight compartment. The modification includes an operational test. 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.

Costs of Compliance

There are about 55 airplanes of the affected design worldwide, and 30 airplanes of U.S. registry. The proposed modification (including the operational test) would take between 2 and 3 work hours, depending on the airplane configuration, at an average labor rate of $65 per work hour. Required parts cost would be minimal. Based on these figures, the estimated cost of the proposed modification for U.S. operators is between $130 and $195 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 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 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–2004–19943; Directorate Identifier 2004–NM–76–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by February 11, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to certain Boeing Model 757–200 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report that the master dim and test system circuit does not have wiring separation of the test ground signal for redundant equipment in the flight compartment. We are issuing this AD to prevent a single fault failure during flight which could result in test patterns instead of the selected radio frequencies showing on the communications panel. These conditions could adversely affect voice and transponder communication capability between the flightcrew and air traffic control, which could result in increased pilot workload.

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

(f) Within 60 months after the effective date of this AD: Modify the wiring of the test ground signal for the master dim and test system circuit in the flight compartment by doing all the applicable actions specified in Boeing Service Bulletin 757–33–0050, Revision 2, dated December 4, 2003.

Modifications Done Using Previous Issues of the Service Bulletin

(g) Modifications done before the effective date of this AD in accordance with Boeing Service Bulletin 757–33–0050, dated August 15, 2002; or Revision 1, dated January 30, 2003; are considered acceptable for compliance with paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Seattle 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.

Issued in Renton, Washington, on December 7, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–28250 Filed 12–27–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19928; Directorate Identifier 2004–NE–27–AD]

RIN 2120–AA64

Airworthiness Directives; CFM International (CFMI) CFM56–5, –5A, –5B, and –5C Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for CFM International (CFMI) CFM56–5, –5A, –5B, and –5C series turbofan engines. This proposed AD would require removing certain part number (P/N) air turbine starters from service. This proposed AD results from several reports of failures of uncontained air turbine starters where high-energy particles were not contained within the containment feature of the starter. We are proposing this AD to prevent uncontained failures of air turbine starters, which could result in damage to the airplane.

DATES: We must receive any comments on this proposed AD by February 28, 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, S.W., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact CFM International, Technical Information Operation, One Neumann Way, Cincinnati; OH 45215–1988 for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7152; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2004–19928; Directorate Identifier 2004–NE–27–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the AD Docket

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

Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on CFMI CFM56–5, –5A, –5B, and –5C series turbofan engines. The DGAC advises that several uncontained failures of certain P/N air turbine starters where high-energy particles were not contained within the containment feature of the starter have occurred. This proposed AD would require removing the affected air turbine starters from service. This condition, if not corrected, could result in uncontained failures of air turbine starters, which could result in damage to the airplane.

Relevant Service Information

We have reviewed and approved the technical contents of:

- CFMI Service Bulletin (SB) No. (CFM56–5) 80–0018, Revision 1, dated November 26, 2003.
- CFMI SB No. (CFM56–5) 80–0020, Revision 1, dated November 26, 2003.
- CFMI SB No. (CFM56–5B) 80–0011, Revision 1, dated November 26, 2003.
- CFMI SB No. (CFM56–5C) 80–0013, Revision 1, dated November 26, 2003.

These service bulletins describe procedures for removal of the air turbine starter. The DGAC classified these service bulletins as mandatory and issued airworthiness directive AD F–2003–456, Revision 2, dated September 29, 2004 in order to ensure the airworthiness of these CFMI CFM56–5, –5A, –5B, and –5C series turbofan engines in France.

Differences Between This Proposed AD and the Manufacturer's Service Information

The manufacturer's service information requires compliance with the proposed requirements of this AD at the next shop visit of the engine or the next air turbine starter shop visit. This proposed AD only requires compliance at the next air turbine starter shop visit.

FAA's Determination and Requirements of the Proposed AD

These turbofan engines, manufactured in France, 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. In keeping with this bilateral airworthiness agreement, the DGAC kept us informed of the situation described above. We have examined the DGAC's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. We are proposing this AD, which would require removing certain P/N air turbine starters from service at the next turbine starter shop visit, but no later than December 31, 2009.

Costs of Compliance

There are about 3,579 CFMI CFM56–5, –5A, –5B, and –5C series turbofan engines of the affected design in the worldwide fleet. We estimate that this

proposed AD would affect 600 air turbine starters installed on airplanes of U.S. registry. We also estimate that it would take about 1 work hour per engine to perform the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost about $5,000 per air turbine starter. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $3,039,000.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the 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):

CFM International (CFMI): Docket No. FAA–2004–19928; Directorate Identifier 2004–NE–27–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by February 28, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to CFMI CFM56–5, –5A, –5B, and ''5C series turbofan engines with air turbine starters, part numbers (P/Ns) VIN 3505582–24 (301–807–004–0), VIN 3505582–25 (301–807–005–0), VIN 3505582–40 (301–781–203–0), VIN 3505582–41 (301–806–602–0), VIN 3505582–42 (301–806–802–0), VIN 3505582–60 (301–790–903–0), VIN 3505582–61 (301–806–702–0), and VIN 3505582–62 (301–806–902–0), installed. These engines are installed on, but not limited to, Airbus A319, A320, A321, and A340 airplanes.

Unsafe Condition

(d) This AD results from several reports of failures of uncontained air turbine starters where high-energy particles were not contained within the containment feature of the starter. We are issuing this AD to prevent uncontained failures of air turbine starters, which could result in damage to 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.

Removing Air Turbine Starters

(f) At the next air turbine starter shop visit, but no later than December 31, 2009, remove any air turbine starter, that has a P/N specified in this AD, from service.

Prohibition of Air Turbine Starters Not Reworked or Remarked

(g) After the effective date of this AD, do not install any air turbine starters, that have a P/N specified in this AD, into any engine.

Alternative Methods of Compliance

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

Related Information

(i) The following documents also pertain to the subject of this AD:

(1) Direction Generale de L'Aviation Civile (DGAC) AD F–2003–456, Revision 2, dated September 29, 2004.

(2) CFM International (CFMI) Service Bulletin (SB) No. (CFM56–5) 80–0018, Revision 1, dated November 26, 2003.

(3) CFMI SB No. (CFM56–5) 80–0020, Revision 1, dated November 26, 2003.

(4) CFMI SB No. (CFM56–5B) 80–0011, Revision 1, dated November 26, 2003.

(5) CFMI SB No. (CFM56–5C) 80–0013, Revision 1, dated November 26, 2003.

Issued in Burlington, Massachusetts, on December 16, 2004.

Francis A. Favara,

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

[FR Doc. 04–28384 Filed 12–27–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–114726–04]

RIN 1545–BD23

Distribution From a Pension Plan Under a Phased Retirement Program; 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 a proposed rulemaking that provide rules permitting distributions to be made from a pension plan under a phased retirement program and set forth requirements for a bona fide phased retirement program.

DATES: The public hearing is being held on March 14, 2005, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by February 21, 2005.

ADDRESSES: The public hearing is be held in the Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Send submissions to: CC:PA:LPD:PR (REG–114726–04), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m.

to CC:PA:LPD:PR (REG–114726–04), 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 and REG–114726–04).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Cathy Vohs, (202) 622–6090; concerning submissions, the hearing, and/or placement on the building access list to attend the hearing, Sonya M. Cruse of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration), at (202) 622–4693 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The subject of the public hearing is the notice of proposed rulemaking (REG–114726–04) that was published in the **Federal Register** on Wednesday, November 10, 2004 (69 FR 65108).

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who have submitted written 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 (8) copies) by February 21, 2005.

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 the agenda will be made available, free of charge, at the hearing.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Cynthia E. Grigsby,

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

[FR Doc. 04–28328 Filed 12–27–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–114726–04]

RIN 1545–BD23

Distributions From a Pension Plan Under a Phased Retirement Program; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking that was published in the **Federal Register** on November 10, 2004 (69 FR 65108), providing rules permitting distributions to be made from a pension plan under a phased retirement program and set forth requirements for a bona fide phased retirement program.

FOR FURTHER INFORMATION CONTACT: Cathy A. Vohs (202) 622–6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–114726–04) that is the subject of this correction is under section 401(a) of the Internal Revenue Code.

Need for Correction

As published, REG–114726–04 contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–114726–04), that was the subject of FR Doc. 04–24874, is corrected as follows:

1. On page 65111, column 2, in the preamble under the paragraph heading *''Explanation of Provisions''*, fourth paragraph, line 9, the language, ''retirement benefit, commencing a later'' is corrected to read ''retirement benefit, commencing at a later''.

2. On page 65112, column 1, in the preamble under the paragraph heading ''*Explanation of Provisions*'', first paragraph, line 1, the language, ''the continued availability of heath'' is corrected to read ''the continued availability of health''.

3. On page 65112, column 1, in the preamble under the paragraph heading ''*Explanation of Provisions*'', first paragraph, line 6, the language, ''rules relating to heath coverage.'' is corrected to read ''rules relating to health coverage.''

Cynthia E. Grigsby,

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

[FR Doc. 04–28329 Filed 12–27–04; 8:45 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4000 and 4010

RIN 1212–AB01

Electronic Filing—Annual Financial and Actuarial Information

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule would require that certain identifying, financial, and actuarial information be filed electronically in a standardized format. In addition, the proposed rule would require the filing of additional items of supporting information that are readily available to the filer. Finally, the proposed rule would require a filer for the previous year who does not believe a filing is required for the current year to demonstrate why there is no current filing requirement. The proposed rule would benefit filers by streamlining the filing process and would enhance the PBGC's ability to effectively administer the pension insurance program.

DATES: Comments must be received on or before January 27, 2005. See ''30-day comment period'' below.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the above address. Comments also may be submitted electronically through the PBGC's Web site at *http://www.pbgc.gov/regs*, or by fax to 202–326–4112. The PBGC will make all comments available on its Web site, *http://www.pbgc.gov.* Copies of the comments may also be obtained by writing to the PBGC's Communications and Public Affairs Department at Suite 240 at the above address or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or James L. Beller, Attorney,

Pension Benefit Guaranty Corporation, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY/TTD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: This proposed rule is part of the Pension Benefit Guaranty Corporation's (PBGC's) ongoing effort to streamline regulation and to improve administration of the pension insurance program, with a focus on making pension-related data more accurate, complete, and—in particular—transparent. It is also part of the PBGC's ongoing implementation of the Government Paperwork Elimination Act and is consistent with the Office of Management and Budget's directive to remove regulatory impediments to electronic transactions. The rule addresses the filing of information required under part 4010 of the PBGC's regulations (Annual Financial and Actuarial Information Reporting) and builds in the flexibility needed to allow the PBGC to update the electronic filing process as technology advances.

The PBGC administers the pension insurance programs under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). In order to give the PBGC an opportunity to anticipate and attempt to minimize potential liabilities that may arise from the termination of significantly underfunded plans, ERISA section 4010 requires the reporting of actuarial and financial information by controlled groups with pension plans that have significant funding problems. Specifically, reporting is required by a controlled group if: (1) The aggregate unfunded vested benefits of all plans maintained by members of the controlled group exceed $50 million (disregarding plans with no unfunded vested benefits); (2) the conditions specified in section 302(f) of ERISA and section 412(n) of the Internal Revenue Code for imposing a lien for missed contributions exceeding $1 million have been met with respect to any plan maintained by any member of the controlled group; or (3) the Internal Revenue Service has granted minimum funding waivers in excess of $1 million to any plan maintained by any member of the controlled group, and any portion of the waiver(s) is still outstanding.

Pursuant to section 4010 of ERISA, the PBGC issued its regulation on Annual Financial and Actuarial Information Reporting in 1995 (29 CFR part 4010). The regulation specifies the items of identifying, financial, and actuarial information that filers must submit under section 4010. The PBGC reviews the information that is filed and enters it into an electronic data base for more detailed analysis. Computer-assisted analysis of this information helps the PBGC to anticipate possible major demands on the pension insurance system and to focus PBGC resources on situations that pose the greatest risks to that system. Because other sources of information are usually not as current as the section 4010 information, the section 4010 filing plays a major role in the PBGC's ability to protect participant and premium-payer interests.

The PBGC does not currently provide a form for section 4010 filings and thus filers provide the information in a non-standard format. This makes the information harder to use, restricts the PBGC's ability to perform electronic data analysis, and in general results in unnecessary delays. The PBGC's experience with section 4010 filings has led the PBGC to conclude that its ability to protect participant and premium-payer interests would increase and that the filing process would work better if filers provided information electronically and in a standardized format, and is therefore proposing to require electronic filing of section 4010 information in a standardized format.

The PBGC is also proposing to require the submission of certain additional information it needs to carry out its role protecting participant and premium-payer interests; to modify the rules for determining whether aggregate unfunded vested benefits exceed $50 million (the $50 million section 4010 gateway test); and to remove the requirement that a power of attorney accompany any filing made by a person other than a filer.

Standardized electronic format. This proposed rule would require electronic filing in a standardized format (except as otherwise provided by the PBGC), in accordance with instructions on the PBGC's Web site (*http://www.PBGC.gov*). This would enable the PBGC to simplify the reporting process and to improve the accuracy, completeness, and timeliness of the information it receives. The PBGC would be able to access the information quickly and in a complete manner from its data base, while imposing very little additional burden on filers. Almost all section 4010 filers are large corporations accustomed to submitting electronic filings with other government agencies, such as with the Securities and Exchange Commission using EDGAR.

Additional supporting information requirements. Certain additional supporting information not currently required by the regulation is necessary for the PBGC to effectively carry out its statutory responsibilities. The additional information is typically already collected, prepared, and maintained by filers; the new requirement, therefore, imposes very little additional burden.

Liability separated by participant status. Under the current section 4010 filing process, the information about benefit liabilities that the PBGC now receives under § 4010.8(a)(2) does not reflect the breakdown of these liabilities among: (1) Retired participants and beneficiaries receiving payments, (2) terminated vested participants, and (3) active participants; nor are filers required to report the number of participants in each category. This breakdown is necessary to enable the PBGC to better estimate plan liabilities by reflecting the impact of the passage of time and any change in plan assumptions or provisions. Accordingly, the PBGC proposes to amend § 4010.8(a)(2) to require that benefit liabilities be reported separately for these three categories of participants and that the number of participants in each category be reported.

Actuarial valuation report. Section 4010.8(a)(3) of the current regulation requires filers to provide a copy of the actuarial valuation report (AVR) ''that contains or is supplemented by'' certain information, which the regulation lists. The PBGC has found that this listing omits certain important information that is not always included in the AVR. The proposed rule would add the following to the list: (1) The current liability, vested and nonvested, calculated pursuant to Internal Revenue Code Section 412 (separated into information for retired participants and beneficiaries receiving payments, terminated vested participants, and active participants); (2) the expected increase in current liability due to benefits accruing during the plan year; and (3) the expected plan disbursements for the plan year. Because this information has necessarily been developed to prepare the AVR, its submission to the PBGC should impose little additional burden.

Specified actuarial assumptions. The PBGC has found that filers do not always use the mandated actuarial assumptions for purposes of reporting benefit liabilities under section 4010. Such a violation is subject to the assessment of a PBGC penalty under ERISA section 4071 of up to $1,100 for each day the violation continues. In order to help filers avoid the assessment of such a penalty and to ensure that the mandated assumptions are used, the proposed rule would require the filer to specify the actuarial assumptions for

interest rate (*i.e.*, the specific interest rate(s), such as 5%), mortality, retirement age, and loading for administrative expenses, used to calculate benefit liabilities under § 4010.8.

Information on exempt entities. Under the current PBGC regulations (see §§ 4010.4(d), .7(a), .9(a)), filers are not required to include in their section 4010 reports identifying or financial information about ''exempt entities'' (certain small entities that are not contributing sponsors). The exemption was added to the original final rule in response to comments on the proposed rule that it would be unnecessarily burdensome to require filers to report on small, non-sponsor entities. However, these entities sometimes provide a source of recovery for PBGC claims (should any arise) that is not available to other creditors. Reporting is necessary because the PBGC must be aware of the existence of such entities before it can assert claims. To minimize the additional burden on filers, the proposed rule would require the filer to provide initially only the identifying information for exempt entities. The rule would make clear that additional information about exempt entities must be submitted upon written request by the PBGC.

In addition, exempt entities are not required to file. The PBGC invites comments on whether the threshold, under § 4010.4(d), for determining what is an exempt entity is appropriate.

Information on exempt plans. Under the current PBGC regulations (*see* §§ 4010.7(b), .8(a), (c)), filers are required to include in their section 4010 reports identifying information about ''exempt plans'' (certain small or fully funded plans), but are not required to report actuarial information about them. The proposed rule would make clear that additional information about exempt plans must be submitted upon written request by the PBGC.

Financial information on controlled group members. In the case of a controlled group with consolidated financial statements, the current regulation requires the reporting of revenue, operating income, and net assets only for each contributing sponsor (other than an exempt entity). The PBGC has found that it needs this information breakdown on all nonexempt entities included in the consolidated financial statements, not only on contributing sponsors. This information enables the PBGC to identify which controlled group members hold the assets of the consolidated group. Therefore, the proposed rule would require this information breakdown for all members included in the controlled group's consolidated financial statements (other than exempt entities). This information breakdown is currently maintained by controlled groups that file consolidated statements, and thus providing it would not be burdensome.

Identification of controlled group changes. To enable the PBGC to keep track of controlled group members and plans, the proposed rule would require the filer to tell the PBGC which controlled group members and plans joined or left the controlled group during the information year.

Frozen plan information. In order for the PBGC to assess the risk and exposure presented by a plan, the proposed rule would require the filer to identify which plans are frozen as well as the nature of the freeze (*e.g.*, service is frozen but pay is not).

Demonstration by previous filer of exemption. The proposed rule adds a new requirement for any filer that was required to file for the previous year but is not required to file for the current year. Under the proposed rule, these previous filers would need to demonstrate to the PBGC that a filing is not required for the current year. On occasion, when the PBGC discovers that a previous filer has not made a submission for the current year, the PBGC has contacted the filer to determine whether the filer has overlooked the current filing obligation. The PBGC has discovered a number of instances of such oversight. The new requirement would enable the PBGC to ascertain quickly those previous filers that do not need to file for the current year. In addition, it may prevent inadvertent failures to file and thereby prevent the assessment, or reduce the amount, of penalties. Because previous filers need to determine each year whether they are required to file, the new requirement should impose little additional burden.

Modification by instructions on Web site. The proposed rule would allow the PBGC, through instructions on its Web site, to modify the format of the information and to require the submission of additional information relating to the specific information described in the regulation.

$50 million section 4010 gateway test. The current regulation allows filers to determine unfunded vested benefits for purposes of the $50 million section 4010 gateway test using an optional assumptions method. In essence, under the optional method, unfunded vested benefits are determined by using: (1) An interest rate equal to 100% of the annual yield for 30-year Treasury securities, (2) fair market value of plan assets, and (3) specified mortality tables. The optional method was added when the current rule was adopted in 1995 in response to comments because it was expected that the optional assumptions shortly would become the standards that would apply for calculating the variable rate premium under ERISA section 4006. In fact, these assumptions have not become the standards. Instead, Congress has passed several laws that temporarily set the interest rate to be used for calculating the variable rate premium under ERISA section 4006. Under current law, for the 2004 and 2005 plan years, the interest rate is based upon long-term investment grade corporate bonds. Because of these changes and the possibility of future changes in this area, the PBGC proposes to eliminate the use of the optional assumptions method for purposes of the $50 million section 4010 gateway test. Moreover, reporting for this purpose is warranted if the $50 million section 4010 gateway test is reached using the general rule under § 4006.4 of this chapter for determining unfunded vested benefits.

In addition, the PBGC proposes to clarify the rules governing which contributions may be taken into account when determining unfunded vested benefits for purposes of the $50 million section 4010 gateway test.

Power of attorney requirement. The current rule requires the submission of a signed power of attorney whenever a person other than a filer submits the required information. The PBGC proposes to simplify the process by eliminating this requirement as unnecessary. The requirement for a certification by the enrolled actuary would remain, regardless of who submits the filing.

30-day comment period. For this proposed rule, the PBGC is providing a 30-day comment period. The PBGC's need for more complete and up-to-date information under section 4010 has become acute. The recent increase in the number of failures of large underfunded plans, as most clearly evidenced by developments in the airline industry, has heightened the need for the PBGC to know when it must take immediate action to protect participant and premium-payer interests. The information provided by filers pursuant to section 4010 is crucial in allowing the PBGC to act promptly and responsibly.

Because most filers have calendar information years, most section 4010 filings are due on April 15 following the end of the information year. The final rule would need to be in effect well before April 15 to allow filers time to adjust to the new procedures. Were the

PBGC to provide the usual 60-day comment period, it would be extremely difficult to provide adequate notice to filers in order for them to prepare for the filings due April 15, 2005. The delay in applicability would mean that over 80% of filers (those who file on a calendar year basis) would not file under the new rules until April 15, 2006. This significant delay could seriously hamper the PBGC's ability to act promptly where necessary.

Applicability. This proposed rule would apply to reporting for any information year ending on or after December 31, 2004.

Compliance With Rulemaking Guidelines

The PBGC has determined, in consultation with the Office of Management and Budget, that this proposed rule is a ''significant regulatory action'' under Executive Order 12866. The Office of Management and Budget, therefore, has reviewed this notice under Executive Order 12866.

Under section 605(b) of the Regulatory Flexibility Act, the PBGC certifies that the amendments in this rule would not have a significant economic impact on a substantial number of small entities. The tests for identifying filers under section 4010(b) of ERISA effectively limit the filing requirements to large companies and their controlled groups. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), sections 603 and 604 do not apply.

The PBGC is submitting the information requirements contained in this proposed rule to the Office of Management and Budget for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. Persons may obtain copies of the PBGC's request free of charge by contacting the PBGC Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005, 202–326–4020. A summary of the proposed methodology for electronic submission 4010 information filing (including draft screen shots and instructions) is available on the PBGC's Web site at *http://www.pbgc.gov*. This proposed rule would modify paperwork collections under both part 4000 (approved under OMB control number 1212–0059; expires 10/31/06) and part 4010 (approved under OMB control number 1212–0049; expires 3/31/05). 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 PBGC needs the information required to be submitted under part 4010 to enable it (1) to detect and monitor financial problems with the contributing sponsors that maintain severely underfunded pension plans and their controlled group members, (2) to respond quickly when it learns that a controlled group with severely underfunded pension plans intends to engage in a transaction that may significantly reduce the assets available to pay plan liabilities, and (3) to take action to protect participant and premium-payer interests.

The PBGC estimates that an average of 400 controlled groups per year respond to this collection of information. The PBGC further estimates that the average annual burden of this collection of information (including the changes in this proposed rule) is 8.7 hours and $13,750 per controlled group, for a total burden of 3,480 hours and $5,500,000.

Comments on the paperwork provisions under this rule should be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, Washington, DC 20503. The Office of Management and Budget requests that comments be received on or before January 27, 2005 to ensure their consideration.

Comments may address (among other things)—

- Whether the proposed collection of information is needed for the proper performance of the PBGC's functions and will have practical utility;
- The accuracy of the PBGC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancement of the quality, utility, and clarity of the information to be collected; and
- Minimizing 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.

List of Subjects

29 CFR Part 4000

Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4010

Pensions, Reporting and recordkeeping requirements.

For the reasons given above, the PBGC proposes to amend 29 CFR parts 4000 and 4010 as follows.

PART 4000—FILING, ISSUANCE, COMPUTATION OF TIME, AND RECORD RETENTION

1. The authority citation for Part 4000 continues to read as follows:

Authority: 29 U.S.C. 1082(f), 1302(b)(3).

2. Revise paragraph § 4000.3 to read as follows:

§ 4000.3 What Methods of Filing May I Use?

(a) *Paper filings.* Except for the filings listed in paragraph (b) of this section, you may file any submission with us by hand, mail, or commercial delivery service.

(b) *Electronic filings.* You must submit the information required under part 4010 of this chapter electronically in accordance with the instructions on the PBGC's Web site, except as otherwise provided by the PBGC.

(c) *Information on electronic filings.* Current information on electronic filings, including permitted methods, fax numbers, and e-mail addresses, is—

(1) On our Web site, *http://www.pbgc.gov*;

(2) In our various printed forms and instructions packages; and

(3) Available by contacting our Customer Service Center at 1200 K Street, NW., Washington, DC 20005–4026; telephone 1–800–400–7242 (for participants), or 1–800–736–2444 (for practitioners). (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to the appropriate number.)

3. Amend § 4000.4 by adding two sentences to the end of the section to read as follows:

§ 4000.4 Where do I file my submission?

* * * You do not have to address electronic submissions made through our Web site. We are responsible for ensuring that such submissions go to the proper place.

4. Amend § 4000.24 as follows:

a. Add a sentence to the end of paragraph (a); and

b. Add a sentence to the end of paragraph (b)(3)

The additions read as follows:

§ 4000.24 What if I mail my submission or issuance using the U.S. Postal Service?

* * * A submission made through our Web site is considered to have been sent when you perform the last act necessary to indicate that your submission is filed and cannot be further edited or withdrawn.

(b) * * *

(3) * * * A submission made through our Web site is considered to have been sent when you perform the last act necessary to indicate that your submission is filed and cannot be further edited or withdrawn.

* * * * *

5. Amend § 4000.29 by adding three sentences to the end of paragraph (a) introductory text to read as follows:

§ 4000.29 What if I use electronic delivery?

(a) * * * A submission made through our Web site is considered to have been transmitted when you perform the last act necessary to indicate that your submission is filed and cannot be further edited or withdrawn. You do not have to address electronic submissions made through our Web site. We are responsible for ensuring that such submissions go to the proper place.

* * * * *

PART 4010—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING

6. The authority citation for Part 4010 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1310.

7. Revise § 4010.3 to read as follows:

§ 4010.3 Filing requirement.

(a) *In general.* Except as provided in § 4010.8(c) (relating to exempt plans) and except where waivers have been granted under § 4010.11, each filer shall submit to the PBGC annually, on or before the due date specified in § 4010.10, all information specified in § 4010.6(a) with respect to all members of a controlled group and all plans maintained by members of a controlled group. Under § 4000.3(b) of this chapter, except as otherwise provided by the PBGC, the information shall be submitted electronically in accordance with the instructions on the PBGC's Web site.

(b) Single controlled group submission. Any filer or other person may submit the information specified in § 4010.6(a) on behalf of one or more members of a filer's controlled group.

8. Revise paragraphs (a)(3), (b), and (c) introductory text of § 4010.4 to read as follows:

§ 4010.4 Filers.

(a) * * *

(3) Any plan maintained by a member of a controlled group has been granted one or more minimum funding waivers under section 303 of ERISA or section 412(d) of the Code totaling in excess of $1 million and, as of the end of the plan year ending within the information year, any portion thereof is still outstanding (determined in accordance with paragraph (c) of this section).

(b) *Unfunded vested benefits.* (1) *General.* For purposes of the $50 million test in paragraph (a)(1) of this section, the value of a plan's unfunded vested benefits is determined at the end of the plan year ending within the filer's information year in accordance with section 4006(a)(3)(E)(iii) of ERISA and § 4006.4 of this chapter (without reference to the exemptions and special rules under § 4006.5 of this chapter).

(2) *Contributions.* When determining the value of a plan's unfunded vested benefits under paragraph (b)(1) of this section—

(i) Contributions for the plan year ending within the filer's information year (or for any earlier plan year) are taken into account only to the extent they are paid on or before the due date or, if earlier, the filing date under § 4010.10(a) (without regard to the alternative due date under § 4010.10(b)); and

(ii) Contributions used to satisfy quarterly contribution requirements for the current plan year are not taken into account.

(c) *Outstanding waiver.* Before the end of the statutory amortization period, a portion of a minimum funding waiver for a plan is considered outstanding unless—

* * * * *

9. Revise paragraph (c)(2) of § 4010.5 to read as follows:

§ 4010.5 Information year.

* * * * *

(c) * * *

(2) *Example.* Filers A and B are members of the same controlled group. Filer A has a July 1 fiscal year, and filer B has an October 1 fiscal year. The information year is the calendar year. Filer A's financial information with respect to its fiscal year ending June 30, 2004, and filer B's financial information with respect to its fiscal year ending September 30, 2004, must be submitted to the PBGC following the end of the 2004 calendar year (the calendar year in which those fiscal years end). If filer B were an exempt entity, the information year would be filer A's July 1 fiscal year.

10. Revise paragraphs (a) and (b) of § 4010.6 to read as follows:

§ 4010.6 Information to be filed.

(a) *General.* (1) *Current filers.* A filer must submit the information specified in § 4010.7 (identifying information), § 4010.8 (plan actuarial information) and § 4010.9 (financial information) of this part with respect to each member of the filer's controlled group and each plan maintained by any member of the controlled group, and any other information relating to the information specified in §§ 4010.7 though 4010.9, as specified in the instructions on the PBGC's Web site.

(2) *Previous filers.* If a filer for the immediately preceding information year is not required to file for the current information year, the filer must submit information, in accordance with the instructions on the PBGC's Web site, demonstrating why a filing is not required for the current information year.

(b) *Additional information.* By written notification, the PBGC may require any filer to submit additional actuarial or financial information that is necessary to determine plan assets and liabilities for any period through the end of the filer's information year, or the financial status of a filer for any period through the end of the filer's information year (including information on exempt entities and exempt plans). The information must be submitted within ten days after the date of the written notification or by a different time specified therein.

* * * * *

11. Revise § 4010.7 to read as follows:

§ 4010.7 Identifying information.

(a) *Filers.* Each filer is required to provide, in accordance with the instructions on the PBGC's Web site, the following identifying information with respect to each member of the controlled group (*including* exempt entities)

(1) *Current members.* For each entity that is a member of the controlled group as of the end of the filer's information year—

(i) The name, address, and telephone number of the entity and the legal relationships with other members of the controlled group (for example, parent, subsidiary);

(ii) The nine-digit Employer Identification Number (EIN) assigned by the IRS to the entity (or if there is no EIN for the entity, an explanation);

(iii) If the entity became a member of the controlled group during the information year, the date the entity became a member of the controlled group; and

(2) *Former members.* For any entity that ceased to be a member of the controlled group during the filer's information year, the date the entity ceased to be a member of the controlled group and the identifying information required by paragraph (a)(1) of this section as of the date immediately preceding the date the entity left the controlled group.

(b) *Plans.* Each filer is required to provide, in accordance with the instructions on the PBGC's Web site, the following identifying information with respect to each plan (including exempt plans) maintained by any member of the controlled group (including exempt entities)—

(1) *Current plans.* For each plan that is maintained by the controlled group as of the last day of the filer's information year—

(i) The name of the plan;

(ii) The EIN and the three-digit Plan Number (PN) assigned by the contributing sponsor to the plan (or if there is no EIN or PN for the plan, an explanation);

(iii) If the EIN or PN of the plan has changed since the beginning of the filer's information year, the previous EIN or PN and an explanation;

(iv) If the plan had not been maintained by the controlled group immediately before the filer's information year, the date the plan was first maintained by the controlled group during the information year; and

(v) If, as of any day during the information year, the plan was frozen (for eligibility or benefit accrual purposes), a description of the date and the nature of the freeze (*e.g.*, service is frozen but pay is not).

(2) *Former plans.* For any plan that ceased to be maintained by the controlled group during the filer's information year, the date the plan ceased to be so maintained, identification of the controlled group currently maintaining the plan, and the identifying information required by paragraph (b)(1) of this section as of the date immediately preceding that date.

12. Amend § 4010.8 by revising paragraphs (a) inductory text and (1) through (4), (5) introductory text, (5)(iv) through (viii), (6), (b) introductory text, (b)(1), and (2) as follows:

§ 4010.8 Plan actuarial information.

(a) *Required information.* For each plan (other than an exempt plan) maintained by any member of the filer's controlled group, each filer is required to provide, in accordance with the instructions on the PBGC's Web site, the following actuarial information—

(1) The number of—

(i) Retired participants and beneficiaries receiving payments;

(ii) Terminated vested participants, and

(iii) Active participants;

(2) The fair market value of the plan's assets;

(3) The value of the plan's benefit liabilities, setting forth separately the value of the liabilities attributable to retired participants and beneficiaries receiving payments, terminated vested participants, and active participants, determined (in accordance with paragraph (d) of this section) at the end of the plan year ending within the filer's information year;

(4) A description of the actuarial assumptions for interest (*i.e.*, the specific interest rate(s), such as 5%), mortality, retirement age, and loading for administrative expenses, as used to determine the benefit liabilities in paragraph (a)(3) of this section; and

(5) a copy of the actuarial valuation report for the plan year ending within the filer's information year that contains or is supplemented by the following information—

(i) * * *

(iv) The actuarial assumptions and methods used for that plan year for purposes of section 302(b) and (d) of ERISA or section 412(b) and (l) of the Code (and any change in those assumptions and methods since the previous valuation and justifications for any change),

(v) A summary of the principal eligibility and benefit provisions on which the valuation of the plan was based (and any changes to those provisions since the previous valuation), along with descriptions of any benefits not included in the valuation, any significant events that occurred during that plan year, and the plan's early retirement factors,

(vi) The current liability, vested and nonvested, calculated pursuant to section 412 of the Code, setting forth separately the value of the liabilities attributable to retired participants and beneficiaries receiving payments, terminated vested participants, and active participants,

(vii) The expected increase in current liability due to benefits accruing during the plan year, and

(viii) The expected plan disbursements for the plan year; and

(6) A written certification by an enrolled actuary that, to the best of his or her knowledge and belief, the actuarial information submitted is true, correct, and complete and conforms to all applicable laws and regulations, provided that this certification may be qualified in writing, but only to the extent the qualification(s) are permitted under 26 CFR 301.6059–1(d).

(b) Alternative compliance for plan actuarial information. If any of the information specified in paragraph (a)(5) of this section is not available by the date specified in § 4010.10(a), a filer may satisfy the requirement to provide such information by—

(1) Including a statement, with the material that is submitted to the PBGC, that the filer will file the unavailable information by the alternative due date specified in § 4010.10(b), and

(2) Filing such information (along with a certification by an enrolled actuary under paragraph (a)(6) of this section) with the PBGC by that alternative due date.

* * * * *

13. Revise paragraphs (a) introductory text and (b)(2) of § 4010.9 to read as follows:

§ 4010.9 Financial information.

(a) *General.* Except as provided in this section, each filer is required to provide, in accordance with the instructions on the PBGC's Web site, the following financial information for each controlled group member (other than an exempt entity)—

* * *

(b) * * *

(2) If audited financial statements are not available by the date specified in § 4010.10(a), unaudited financial statements for the fiscal year ending within the information year; or

* * * * *

Issued in Washington, DC, this 22nd day of December, 2004.

Bradley D. Belt,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 04–28398 Filed 12–27–04; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–04–171]

RIN 1625–AA00

Security Zone; Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing permanent moving security zones around escorted vessels while they are in the navigable waters of the Fifth Coast Guard District. The proposed security zones would require all vessels in a 500-yard radius around escorted vessels to operate at the minimum speed necessary to navigate safely and prohibit any vessels from entering within 100 yards of an escorted vessel. These proposed security zones would mitigate

potential terrorist acts and enhance public and maritime safety and security.

DATES: Comments and related material must reach the Coast Guard on or before February 28, 2005.

ADDRESSES: You may mail comments and related material to Fifth Coast Guard District, Marine Safety Division, 431 Crawford Street, Portsmouth, Virginia, 23704. The Fifth District Marine Safety Division 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 mentioned office between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant E.J. Terminella, Fifth Coast Guard District, at (757) 398–7783.

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 (CGD05–04–171), 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 that your submission 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 Fifth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

Due to increased awareness that future terrorist attacks are possible, the Coast Guard, as Lead Federal Agency for maritime homeland security, has determined that the Captain of the Port must have the means to be aware of, detect, deter, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while maintaining our freedoms and sustaining the flow of commerce. Terrorists have demonstrated both desire and ability to utilize multiple means in different geographic areas to successfully carry out their terrorist missions.

During the past 3 years, the Federal Bureau of Investigation has issued several advisories to the public concerning the potential for terrorist attacks within the United States. The October 2002 attack on a tank vessel, M/V LIMBURG, off the coast of Yemen and the prior attack on the USS COLE demonstrate a continuing threat to U.S. maritime assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) and Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). Furthermore, the ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. port and waterway users to be on a higher state of alert because the Al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In addition to escorting vessels, a security zone is a tool available to the Coast Guard that may be used to control maritime traffic operating in the vicinity of vessels, which the Coast Guard has determined need additional security measures during their transit. The COTP would use this regulation to establish a security zone around vessels to safeguard the port, harbors or waterfront facilities. Vessels that may require an escort are vessels of national security interest, a passenger vessel, vessels carrying certain dangerous or hazardous cargo. These proposed security zones around all escorted vessels during transit and while the escorted vessels are anchored, moored, or underway within the Fifth Coast Guard District will help ensure the safety of the ports and vessels in the navigable waters of the Fifth Coast Guard District.

Discussion of Proposed Rule

This rule proposes placing a 500-yard security zone around all vessels that are being escorted by a Coast Guard surface, air or Coast Guard Auxiliary asset, or by a local law enforcement agency during their transit through the Fifth Coast Guard District. Only vessels traveling at the minimum safe speed may transit in the 500-yard zone and no persons or vessels will be allowed within 100 yards of any escorted vessel, without the permission of the District Commander, Captain of the Port or their designated representatives, while the vessel is within the Fifth Coast Guard District. Persons desiring to transit within 100 yards of an escorted vessel in the Fifth Coast Guard District must contact the local Captain of the Port on VHF channel 16 (156.800 MHz) or VHF channel 13 (156.650 MHz) and obtain permission to transit within 100 yards of the escorted vessel. The boundaries of the Fifth Coast Guard District are defined in 33 CFR 3.25–1. And the boundaries of the four COTP zones are defined in § 3.25–05, Philadelphia Captain of the Port Zone; § 3.25–10, Hampton Roads Marine Inspection Zone and Captain of the Port Zone; § 3.25–15, Baltimore Captain of the Port Zone, and § 3.25–20, Wilmington Marine Inspection Zone and Captain of the Port Zone.

All persons within 500-yards of an escorted vessel would be required to operate their vessels at the minimum safe speed necessary to maintain navigation in accordance with the Navigation Rules in 33 CFR Chapter I, subchapters D and E. Stationary vessels that are moored or anchored must remain moored or anchored when an escorted vessel approaches within 100 yards of the stationary vessel. Additionally, vessels restricted in their ability to maneuver may request permission from the District Commander, Captain of the Port, or a designated representative, to enter within 100 yards of an escorted vessel in order to ensure safe passage in accordance with the Navigation Rules in 33 CFR Chapter I, subparts D and E.

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.

This finding is based on the relatively small percentage of ships that would fall

within the applicability of the regulation, the relatively small size of the limited access area around each ship, the minimal amount of time that vessels will be restricted in course or speed when the zone is being enforced, and the ease with which vessels may transit around the affected area. In addition, vessels that may need to enter the zones may request permission on a case-by-case basis from the District Commander, Captain of the Port or their designated representatives.

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 rule affects the following entities, some of which might be small entities: The owners or operators of vessels intending to transit in the security zone near an escorted vessel.

This proposed rule would not have a significant impact on a substantial number of small entities because the restrictions affect only a limited area. Although this is a permanent security zone, the rule is effective only when vessels are escorted and vessel traffic could pass safely around the security zone. Additionally, the opportunity to engage in recreational and charter fishing outside the limits of the security zone will not be disrupted.

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 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they could better evaluate its effects on them and participate in the rulemaking process. 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 Lieutenant E.J. Terminella, Coast Guard Fifth Coast Guard District, at (757) 398–7783. 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

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this 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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

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. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

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)(g), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(g) of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. If you disagree with this categorical exclusion, comments on this section will be considered.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat.2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.518 to read as follows:

§ 165.518 Security Zone; Waters of the Fifth Coast Guard District.

(a) *Definitions.* As used in this section—

Designated Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the District Commander or local Captain of the Port (COTP), as defined in 33 CFR part 3, subpart 3.25, to act on his or her behalf.

Escorted vessel means a vessel that is accompanied by one or more Coast Guard assets or Federal, State or local law enforcement agency assets as listed below:

(1) Coast Guard surface or air asset displaying the Coast Guard insignia.

(2) Coast Guard Auxiliary surface asset displaying the Coast Guard Auxiliary insignia.

(3) State and/or local law enforcement asset displaying the applicable agency markings and or equipment associated with the agency.

State and/or local law enforcement officers means any State or local government law enforcement officer who has authority to enforce State criminal laws.

(b) *Location.* The following area is a security zone: 500-yard radius around escorted vessels in the navigable waters of the Fifth Coast Guard District as defined in 33 CFR 3.25–1, from surface to bottom.

(c) *Regulations.* (1) No vessel may approach within 500 yards of an escorted vessel within the navigable waters of the Fifth Coast Guard District, unless traveling at the minimum speed necessary to navigate safely.

(2) No vessel may enter within a 100-yard radius of an escorted vessel within the navigable waters of the Fifth Coast Guard District, without approval from the District Commander, Captain of the Port or their designated representatives.

(3) Moored or anchored vessels, which are overtaken by a moving zone, must remain stationary at their location until the escorted vessel maneuvers at least 500 yards past.

(4) Vessels restricted in their ability to maneuver may request permission of the District Commander, Captain of the Port or designated representative to enter the security zone in order to ensure safe passage in accordance with the Navigation Rules in 33 CFR chapter I, subparts D and E.

(5) The local COTP may notify the maritime and general public by marine information broadcast of the periods during which individual security zones have been activated by providing notice in accordance with 33 CFR 165.7.

(6) When moored, a security zone around an escorted vessel may also be enforced by Coast Guard, State or local law enforcement personnel shoreside.

(7) Persons desiring to transit within 100 yards of an escorted vessel in the Fifth Coast Guard District must contact the local Captain of the Port on VHF channel 16 (156.800 MHz), VHF channel 13 (156.650 MHz) or at telephone numbers:

Philadelphia: (215) 271–4807,
Baltimore: (410) 576–2693,
Hampton Roads: (757) 668–5555 or (757) 484–8192, or
Wilmington: (910) 772–2200 or (910) 254–1500.

(8) If permission is granted to transit within 100 yards of an escorted vessel, all persons and vessels must comply with the instructions of the District Commander, Captain of the Port or his or her designated representative.

Dated: December 14, 2004.

S. Brice-O'Hara,

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

[FR Doc. 04–28228 Filed 12–27–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2004–DC–0003; FRL–7854–1]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Excess Volatile Organic Compound and Nitrogen Oxides Emissions Fee Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the District of Columbia (District) for the purpose of establishing a fee on major VOC (volatile organic compound) and NO_X (nitrogen oxides) sources in The District which is part of the Metropolitan Washington D.C. Severe Ozone Nonattainment Area. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by January 27, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2004–DC–0003 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *morris.makeba@epa.gov.*

D. Mail: R03–OAR–2004–DC–0003, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency,

Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2004–DC–0003. 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.docket.epa.gov/rmepub/*, 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME 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.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/.* 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 RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, (215) 814–2174, or by e-mail at *magliocchetti.catherine@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Excess Volatile Organic Compound and Nitrogen Oxides Emissions Fee Rule, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: December 14, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 04–28192 Filed 12–27–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2004–DC–0006; FRL–7854–8]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; VOC Emission Standards for Consumer Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the District of Columbia for the purpose of establishing a regulation to control the volatile organic compounds (VOC) from consumer products in the District of Columbia. In the Final Rules section of this **Federal Register**, EPA is approving the District's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by January 27, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2004–DC–0006 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *morris.makeba@epa.gov.*

D. Mail: R03–OAR–2004–DC–0006 Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2004–DC–0006. 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.docket.epa.gov/rmepub/*, 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME 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.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. 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 RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, District of Columbia's Approval of VOC Emission Standards for Consumer Products, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: December 14, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 04–28194 Filed 12–27–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME R03–OAR–2004–DC–0002; FRL–7855–2]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Approval of Minor Clarifications to Municipal Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is taking direct final action to approve revisions to the District of Columbia State Implementation Plan (SIP). The revisions include minor changes to clarify that the allowable emission rates for particulates and nitrogen oxides (NO_X) are expressed in pounds of pollutant per million BTUs (lbs/MMBTUs) of heat input in District of Columbia Municipal Regulations (DCMRs). In the Final Rules section of this **Federal Register**, EPA is approving the District's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by January 27, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2004–DC–0002 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *morris.makeba@epa.gov*

D. Mail: R03-OAR–2004-DC–0002, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2004–DC–0002. 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.docket.epa.gov/rmepub/*, 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME 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.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. 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 RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the District submittal are available at the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Linda Miller, (215) 814–2068, or by e-mail at *miller.linda@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information on this proposed approval of clarifications to 20 DCMR, Chapter 6 and 8 at Sections 600.01 and 805.5, please see the information provided in the direct final action, with the same title, that is located in the

''Rules and Regulations'' section of this **Federal Register** publication.

Dated: December 14, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 04–28196 Filed 12–27–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME R03–OAR–2004–DC–0001; FRL–7855–4]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Amendments to the Size Thresholds for Defining Major Sources and to the NSR Offset Ratios for Sources of VOC and NO_X

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the District of Columbia (the District) State Implementation Plan (SIP). The revisions reduce the size thresholds for defining major sources and increase the new source review (NSR) offset ratio requirements for sources of ozone precursors to meet the Clean Air Act (CAA) requirements for 1-hour ozone nonattainment areas classified as severe. These amendments to the District's SIP are required pursuant to the reclassification of the Metropolitan Washington, DC 1-hour ozone nonattainment area from serious to severe. In the Final Rules section of this **Federal Register**, EPA is approving the District's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by January 27, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2004–DC–0001 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *morris.makeba@epa.gov.*

D. Mail: R03–OAR02004–DC–0001, Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2004–DC–0001. 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.docket.epa.gov/rmepub/*, 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME 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.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. 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 RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the District submittal are available at the District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Linda Miller, (215) 814–2068, or by e-mail at *miller.linda@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information on this proposed approval of revisions to 20 DCMR Chapters 1, 2, 7 and 8 which reduce the major source size thresholds and increase the offset ratio requirements in order to satisfy the mandatory CAA requirements pursuant to the reclassification of the Metropolitan Washington DC 1-hour ozone nonattainment area from serious to severe, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: December 14, 2004.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 04–28198 Filed 12–27–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7855–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: EPA is proposing to grant a petition submitted by Shell Oil Company (Shell Oil Company) to exclude (or delist) a certain liquid waste generated by its Houston, TX Deer Park

facility from the lists of hazardous wastes.

EPA used the Delisting Risk Assessment Software (DRAS) in the evaluation of the impact of the petitioned waste on human health and the environment.

EPA bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, EPA would conclude that Shell Oil Company's petitioned waste is nonhazardous with respect to the original listing criteria. EPA would also conclude that Shell Oil Company's process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: EPA will accept comments until February 11, 2005. EPA will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Your requests for a hearing must reach EPA by January 12, 2005. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send three copies of your comments. You should send two copies to the Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. You should send a third copy to Nicole Bealle, Waste Team Leader, Texas Commission on Environmental Quality, 5425 Polk Avenue, Suite A, Houston, TX 77023. Identify your comments at the top with this regulatory docket number: ''F–04–TEXDEL–Shell Oil.''

You should address requests for a hearing to Ben Banipal, Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Comments may also be submitted electronically to Michelle Peace at *peace.michelle@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

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I. Overview Information

A. What Action Is EPA Proposing?

EPA is proposing:

(1) To grant Shell Oil Company's delisting petition to have its multisource landfill leachate underlying the Minimum Technology Requirements (MTR) hazardous waste landfill excluded, or delisted, from the definition of a hazardous waste; and subject to certain verification and monitoring conditions.

(2) To use the Delisting Risk Assessment Software (DRAS) to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency used this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

B. Why Is EPA Proposing To Approve This Delisting?

Shell Oil Company's petition requests an exclusion from the F039 waste listing pursuant to 40 CFR 260.20 and 260.22. Shell Oil Company does not believe that the petitioned waste meets the criteria for which EPA listed it. Shell Oil Company also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. (If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's proposed decision to delist waste from Shell Oil Company's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Deer Park, TX facility.

C. How Will Shell Oil Company Manage the Waste if it Is Delisted?

If the leachate is delisted, Shell will make piping modifications to allow the leachate to be routed to the North Effluent Treater (NET) for treatment. The treated effluent will be discharged through an Texas Pollutant Discharge Elimination System (TPDES) permitted outfall.

D. When Would the Proposed Delisting Exclusion be Finalized?

RCRA section 3001(f) specifically requires EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion until it addresses all timely public comments (including those at public hearings, if any) on this proposal.

RCRA section 3010(b)(1) at 42 USCA 6930(b)(1), allows rules to become effective in less than six months when the regulated facility does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How Would This Action Affect the States?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude states which have received authorization from EPA to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, EPA urges petitioners to contact the state regulatory authority to establish the status of their wastes under the state law.

EPA has also authorized some states (for example, Louisiana, Oklahoma, Georgia, Illinois) to administer an RCRA delisting program in place of the Federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states unless that state makes the rule part of its authorized program. If Shell Oil Company transports the petitioned waste to or manages the waste in any state with delisting authorization, Shell Oil Company must obtain delisting authorization from that state before it can manage the waste as nonhazardous in the state.

II. Background

A. What Is the History of the Delisting Program?

EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. EPA has amended this list several times and published it in §§ 261.31 and 261.32.

EPA lists these wastes as hazardous because: (1) The wastes typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity), (2) the wastes meet the criteria for listing contained in §§ 261.11(a)(2) or (a)(3), or (3) the wastes are mixed with or derived from the treatment, storage or disposal of such characteristic and listed wastes and which therefore become hazardous under §§ 261.3(a)(2)(iv) or (c)(2)(i), known as the ''mixture'' or ''derived-from'' rules, respectively.

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations or resulting from the operation of the mixture or derived-from rules generally is hazardous, a specific waste from an individual facility may not be hazardous.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What Is a Delisting Petition, and What Does it Require of a Petitioner?

A delisting petition is a request from a facility to EPA or an authorized state to exclude wastes from the list of hazardous wastes. The facility petitions EPA because it does not consider the wastes hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which the waste was listed. The criteria for which EPA lists a waste are in part 261 and further explained in the background documents for the listed waste.

In addition, under § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (*See* part 261 and the background documents for the listed waste.)

Generators remain obligated under RCRA to confirm whether their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has ''delisted'' the waste.

C. What Factors Must EPA Consider in Deciding Whether To Grant a Delisting Petition?

Besides considering the criteria in § 260.22(a) and section 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which EPA listed the waste, if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See § 261.3(a)(2)(iii) and (iv) and (c)(2)(i), called the ''mixture'' and ''derived-from'' rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 66 FR 27266 (May 16, 2001).

III. EPA's Evaluation of the Waste Information and Data

A. What Waste Did Shell Oil Company Petition EPA To Delist?

On January 29, 2003, Shell Oil Company petitioned EPA to exclude from the lists of hazardous wastes contained in § 261.31, multisource landfill leachate (F039) generated from its facility located in Deer Park, Texas. The waste falls under the classification of listed waste pursuant to § 261.31. Specifically, in its petition, Shell Oil Company requested that EPA grant a standard exclusion for 3.36 million gallons (16,619 cu. yards) per year of the multisource landfill leachate.

B. Who Is Shell Oil Company and What Process Does it Use To Generate the Petitioned Waste?

Shell Oil Company refines high sulfur crude oil from Mexico into products including gasoline, kerosene, jet fuel, fuel oil, lube oil and others. The hazardous wastes included incinerator ash, spent catalysts and filters,

Chloronated Plate Interceptor (CPI) sludge from the refinery wastewater treatment plant, NET and primary solids from Shell Chemical and the South Effluent Treater (SET). The wastes disposed of in the minimum technological requirements (MTR) landfill for the past four years have been Class 1 and Class 2 nonhazardous wastes. The landfill is designed to meet the minimum technological requirements specified in 40 CFR § 264.301. The design includes a primary leachate collection system and liner (underlying the deposited waste) followed by a secondary leachate collection system. Leachate from this landfill requires offsite disposal as an F039 (multisource leachate) listed waste. However, analytical data collected monthly for this aqueous stream shows that it is not a characteristic waste and contains little to no detectable concentrations of organic constituents.

C. How Did Shell Oil Company Sample and Analyze the Data in This Petition?

To support its petition, Shell Oil Company submitted:

(1) Historical information on past waste generation and management practices;

(2) Results of the total constituent list for 40 CFR part 264 Appendix IX volatiles, semivolatiles, metals, pesticides, herbicides, dioxins and PCBs;

(3) Results of the constituent list for 40 CFR part 264 Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals;

(4) Analytical constituents of concern for F039;

(5) Results from total oil and grease analyses;

(6) Multiple pH testing for the petitioned waste.

D. What Were the Results of Shell Oil Company's Analyses?

EPA believes that the descriptions of the Shell Oil Company analytical characterization provide a reasonable basis to grant Shell Oil Company's petition for an exclusion of the multisource landfill leachate. EPA believes the data submitted in support of the petition show the multisource landfill leachate is non-hazardous. Analytical data for the multisource landfill leachate samples were used in the DRAS to develop delisting levels. The data summaries for detected constituents are presented in Table I. EPA has reviewed the sampling procedures used by Shell Oil Company and has determined that it satisfies EPA criteria for collecting representative samples of the variations in constituent concentrations in the multisource landfill leachate. In addition, the data submitted in support of the petition show that constituents in Shell Oil Company's waste are presently below health-based levels used in the delisting decision-making. EPA believes that Shell Oil Company has successfully demonstrated that the multisource landfill leachate is non-hazardous.

TABLE I.—MAXIMUM TCLP CONCENTRATIONS AND MAXIMUM ALLOWABLE DELISTING CONCENTRATION OF THE MULTISOURCE LANDFILL LEACHATE AT THE SHELL OIL COMPANY DEER PARK, TX FACILITY [1]

Constituent	TCLP analyses (mg/l)	Maximum allowable delisting concentration levels (mg/l)
Antimony	0.0092	0.0204
Arsenic	0.011	[2] 0.385
Barium	0.252	2.92
Copper	0.00553	418.00
Chromium	0.0122	5.0
Cobalt	0.0126	2.25
Nickel	0.0368	1.13
Selenium	0.0128	0.0863
Acetone	0.033	1.46
Acetophenone	0.0031	1.58
Benzene	0.013	0.022
Dichloroethane, 1,2	0.0014	0.0803
Ethylbenzene	0.00098	4.51
Napthalene	0.0061	1.05
Phenanthrene [3]	0.0014	1.39
Phenol	0.056	9.46
TCDD,2,3,7,8	0.00000000325	0.0000926
Trichloropropane	0.00025	0.000574
Xylenes (total)	0.0016	97.60

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.

[2] EPA defers to the maximum allowable delisting concentration based on the MCL. As a result, Shell Oil Company's analytical sampling results and consequent DRAS analysis meet the criteria for the proposed delisting petition approval.

[3] The DRAS program does not have a delisting concentration for phenanthrene. Consequently EPA substituted anthracene into the DRAS program to set a delisting level for phenanthrene. Anthracene has similar toxicological and health based properties as phenanthrene. The DRAS program contains a complete risk-based dataset for anthracene. Shell Oil Company's phenanthrene analytical sampling results and consequent DRAS analysis using anthracene input parameters meet the criteria for the proposed phenanthrene delisting level.

[4] Shell ran TCLP analysis only for the liquid wastes, total analysis were excluding because similar analytical results would be provided.

E. How Did EPA Evaluate the Risk of Delisting This Waste?

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (*i.e.*, groundwater, surface water, air) for hazardous constituents present in the petitioned waste. EPA determined that disposal in a surface impoundment is the most reasonable, worst-case disposal scenario for Shell Oil Company's petitioned waste. EPA applied the Delisting Risk Assessment Software (DRAS) described in 65 FR 58015 (September 27, 2000) and 65 FR 75637

(December 4, 2000), to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and determined the potential impact of the disposal of Shell Oil Company's petitioned waste on human health and the environment. A copy of this software can be found on the world wide web at *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm*. In assessing potential risks to groundwater, EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the groundwater at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10^{-5} and non-cancer hazard index of 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and EPA health-based numbers. Using the maximum compliance-point concentrations and EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in groundwater.

EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible groundwater contamination resulting from disposal of the petitioned waste in a surface impoundment, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios resulted in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

The DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.*, volatilization from the surface impoundment). As in the above groundwater analyses, the DRAS uses the risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or ''delisting levels'').

In most cases, because a delisted waste is no longer subject to hazardous waste control, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. EPA does control the type of unit where the waste is disposed. The waste must be disposed in the type of unit the fate and transport model evaluates.

EPA also considers the applicability of groundwater monitoring data during the evaluation of delisting petitions. In this case, Shell Oil Company will dispose of its wastewater in its TPDES permitted NET unit, with existing groundwater contamination sources. The groundwater contamination is currently being addressed and managed through a RCRA Corrective Actions Program. Consequently the groundwater data would not be relevant to this exclusion. Therefore, EPA has determined that it would be unnecessary to request groundwater monitoring data.

EPA believes that the descriptions of Shell Oil Company hazardous waste process and analytical characterization provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized.

The DRAS results which calculate the maximum allowable concentration of chemical constituents in the waste are presented in Table I. Based on the comparison of results from the DRAS and maximum TCLP concentrations found in Table I, the petitioned waste should be delisted because no constituents of concern tested are likely to be present or formed as reaction products or by-products in Shell Oil Company's waste.

F. What Did EPA Conclude About Shell Oil Company's Analysis?

EPA concluded, after reviewing Shell Oil Company's processes that no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by-products in the waste. In addition, on the basis of explanations and analytical data provided by Shell Oil Company, pursuant to § 260.22, EPA concludes that the petitioned waste do not exhibit any of the characteristics of ignitability, corrosivity, reactivity or toxicity. See §§ 261.21, 261.22 261.23 and 261.24, respectively.

G. What Other Factors Did EPA Consider in Its Evaluation?

During the evaluation of Shell Oil Company's petition, EPA also considered the potential impact of the petitioned waste via non-groundwater routes (*i.e.*, air emission and surface runoff). With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from Shell Oil Company's petitioned waste is unlikely. Therefore, no appreciable air releases are likely from Shell Oil Company waste under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from Shell Oil Company's waste in an open surface impoundment. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from Shell Oil Company's multisource landfill leachate.

H. What Is EPA's Evaluation of This Delisting Petition?

The descriptions of Shell Oil Company's hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis for EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable leachable concentrations (*see* Table I). EPA believes Shell Oil Company's process will substantially reduce the likelihood of migration of hazardous constituents from the petitioned waste. Shell Oil Company's process also minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

Thus, EPA believes Shell Oil Company should be granted an exclusion for the multisource landfill leachate. EPA believes the data submitted in support of the petition show Shell Oil Company's multisource landfill leachate is non-hazardous. EPA has reviewed the sampling procedures used by Shell Oil Company and has determined that it satisfies EPA criteria for collecting representative samples of variable constituent concentrations in the multisource landfill leachate. The data submitted in support of the petition

show that constituents in Shell Oil Company's waste are presently below the compliance point concentrations used in the delisting decision and would not pose a substantial hazard to the environment. EPA believes that Shell Oil Company has successfully demonstrated that the multisource landfill leachate is non-hazardous.

EPA therefore, proposes to grant an exclusion to Shell Oil Company, in Deer Park, Texas, for the multisource landfill leachate described in its petition. EPA's decision to exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the multisource landfill leachate.

If EPA finalizes the proposed rule, EPA will no longer regulate the petitioned waste under Parts 262 through 268 and the permitting standards of Part 270.

IV. Next Steps

A. With What Conditions Must the Petitioner Comply?

The petitioner, Shell Oil Company, must comply with the requirements in 40 CFR part 261, Appendix IX, Table 1. The text below gives the rationale and details of those requirements.

(1) Delisting Levels

This paragraph provides the levels of constituents for which Shell Oil Company must test the multisource landfill leachate, below which these wastes would be considered non-hazardous.

EPA selected the set of inorganic and organic constituents specified in Paragraph (1) of 40 CFR part 261, Appendix IX, Table 1, (the exclusion language) based on information in the petition. EPA compiled the inorganic and organic constituents list from the composition of the waste, descriptions of Shell Oil Company's treatment process, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making. These delisting levels correspond to the allowable levels measured in the total concentrations. The limits described here do not relieve Shell Oil Company of its duty to comply with discharge limits in its TPDES permit.

(2) Waste Holding and Handling

The purpose of this paragraph is to ensure that Shell Oil Company manages and disposes of any multisource landfill leachate that contains hazardous levels of inorganic and organic constituents according to Subtitle C of RCRA. Managing the multisource landfill leachate as a hazardous waste until initial verification testing is performed will protect against improper handling of hazardous material. If EPA determines that the data collected under this Paragraph do not support the data provided for in the petition, the exclusion will not cover the petitioned waste. The exclusion is effective upon publication in the **Federal Register** but the disposal as non-hazardous cannot begin until the verification sampling is completed.

(3) Verification Testing Requirements

Shell Oil Company must complete a rigorous verification testing program on the multisource landfill leachate to assure that the treated multisource landfill leachate does not exceed the maximum levels specified in Paragraph (1) of the exclusion language. This verification program operates on two levels.

The first part of the verification testing program consists of testing the multisource landfill leachate for specified indicator parameters as per Paragraph (1) of the exclusion language.

If EPA determines that the data collected under this Paragraph do not support the data provided for the petition, the exclusion will not cover the generated wastes. If the data from the initial verification testing program demonstrate that the leachate meets the delisting levels, Shell Oil Company may request quarterly testing. EPA will notify Shell Oil Company, in writing, if and when it may replace the testing conditions in paragraph (3)(A) with the testing conditions in (3)(B) of the exclusion language.

The second part of the verification testing program is the quarterly testing of representative samples of multisource landfill leachate for all constituents specified in Paragraph (1) of the exclusion language. EPA believes that the concentrations of the constituents of concern in the multisource landfill leachate may vary over time. Consequently this program will ensure that the leachate is evaluated in terms of variation in constituent concentrations in the waste over time.

The proposed subsequent testing would verify that Shell Oil Company operates a landfill where the constituent concentrations of the multisource landfill leachate do not exhibit unacceptable temporal and spatial levels of toxic constituents.

EPA is proposing to require Shell Oil Company to analyze representative samples of the multisource landfill leachate quarterly during the first year of waste generation. Shell Oil Company would begin quarterly sampling 60 days after the final exclusion as described in Paragraph (3)(B) of the exclusion language.

EPA, per Paragraph 3(C) of the exclusion language, is proposing to end the subsequent testing conditions after the first year, if Shell Oil Company has demonstrated that the waste consistently meets the delisting levels. To confirm that the characteristics of the waste do not change significantly over time, Shell Oil Company must continue to analyze a representative sample of the waste on an annual basis. Annual testing requires analyzing the full list of components in Paragraph (1) of the exclusion language. If operating conditions change as described in Paragraph (4) of the exclusion language; Shell Oil Company must reinstate all testing in Paragraph (1) of the exclusion language. Shell Oil Company must prove through a new demonstration that their waste meets the conditions of the exclusion.

If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, Shell Oil Company must notify EPA according to the requirements in Paragraph 6 of the exclusion language. The facility must provide sampling results that support the rationale that the delisting exclusion should not be withdrawn.

(4) Changes in Operating Conditions

Paragraph (4) of the exclusion language would allow Shell Oil Company the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment process. However, Shell Oil Company must prove the effectiveness of the modified process and request approval from EPA. Shell Oil Company must manage wastes generated during the new process demonstration as hazardous waste until it has obtained written approval and Paragraph (3) of the exclusion language is satisfied.

(5) Data Submittals

To provide appropriate documentation that Shell Oil Company's multisource landfill leachate is meeting the delisting levels, Shell Oil Company must compile, summarize, and keep delisting records on-site for a minimum of five years. It should keep all analytical data obtained through Paragraph (3) of the exclusion language including quality control information for five years. Paragraph (5) of the exclusion language requires that Shell Oil Company furnish these data upon request for inspection by any employee or representative of EPA or the state of Texas.

If the proposed exclusion is made final, it will apply only to 3.36 million gallons (16,619 cu. yards) per year of multisource landfill leachate, generated at the Shell Oil Company facility after successful verification testing.

EPA would require Shell Oil Company to file a new delisting petition under any of the following circumstances:

(a) If it significantly alters the manufacturing process treatment system except as described in Paragraph (4) of the exclusion language;

(b) If it uses any new manufacturing or production process(es), or significantly changes from the current process(es) described in their petition; or

(c) If it makes any changes that could affect the composition or type of waste generated.

Shell Oil Company must manage waste volumes greater than 3.36 million gallons (16,619 cu. yards) per year of multisource landfill leachate as hazardous until EPA grants a new exclusion.

When this exclusion becomes final, Shell Oil Company's management of the wastes covered by this petition would be relieved from Subtitle C jurisdiction. Shell Oil Company must either treat, store, or dispose of the waste in an on-site facility. If not, Shell Oil Company must ensure that it delivers the waste to an off-site storage, treatment, or disposal facility that has a state permit, license, or register to manage municipal or industrial solid waste.

(6) Reopener

The purpose of Paragraph (6) of the exclusion language is to require Shell Oil Company to disclose new or different information related to a condition at the facility or disposal of the waste, if it is pertinent to the delisting. Shell Oil Company must also use this procedure if the waste sample in the annual testing fails to meet the levels found in Paragraph 1. This provision will allow EPA to reevaluate the exclusion, if a source provides new or additional information to EPA. EPA will evaluate the information on which EPA based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition, if presented.

This provision expressly requires Shell Oil Company to report differing site conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

EPA believes that it has the authority under RCRA and the Administrative Procedures Act (APA), 5 U.S.C. § 551 (1978) *et seq.*, to reopen a delisting decision. EPA may reopen a delisting decision when it receives new information that calls into question the assumptions underlying the delisting.

EPA believes a clear statement of its authority in delistings is merited in light of EPA's experience. See Reynolds Metals Company at 62 FR 37694 and 62 FR 63458 where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading EPA to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations on a case by case basis. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. See APA § 553 (b).

(7) Notification Requirements

In order to adequately track wastes that have been delisted, EPA is requiring that Shell Oil Company provide a one-time notification to any state regulatory agency through which or to which the delisted waste is being carried. Shell Oil Company must provide this notification 60 days before commencing this activity.

B. What Happens if Shell Oil Company Violates the Terms and Conditions?

If Shell Oil Company violates the terms and conditions established in the exclusion, EPA will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, EPA will evaluate the need for enforcement activities on a case-by-case basis. EPA expects Shell Oil Company to conduct the appropriate waste analysis and comply with the criteria explained above in Paragraph (1) of the exclusion.

V. Public Comments

A. How Can I as an Interested Party Submit Comments?

EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to Section Chief of the Corrective Action and Waste Minimization Section (6PD–C), Multimedia Planning and Permitting Division, Environmental Protection Agency (EPA), 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to Nicole Bealle, Waste Team Leader, Texas Commission on Environmental Quality, 5425 Polk Avenue Suite A, Houston, TX 77023. Identify your comments at the top with this regulatory docket number: ''F–04–TEXDEL–Shell Oil.'' You may submit your comments electronically to Michelle Peace at *peace.michelle@epa.gov*.

You should submit requests for a hearing to Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section (6PD–C), Multimedia Planning and Permitting Division, U. S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

B. How May I Review the Docket or Obtain Copies of the Proposed Exclusion?

You may review the RCRA regulatory docket for this proposed rule at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in EPA Freedom of Information Act Review Room from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

VI. Regulatory Impact

Under Executive Order 12866, EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from this proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory

flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on a small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, EPA hereby certifies that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

IX. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to state, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

EPA finds that this delisting decision is deregulatory in nature and does not impose any enforceable duty on any state, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

X. Executive Order 13045

The Executive Order 13045 is entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This proposed rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to the Office Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to have ''meaningful and timely input'' in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XII. National Technology Transfer and Advancement Act

Under Section 12(d) of the National Technology Transfer and Advancement Act, EPA is directed 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, business practices, *etc.*) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires that EPA to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, EPA has no need to consider the use of voluntary consensus standards in developing this final rule.

XIII. Executive Order 13132 Federalism

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

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with

state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless EPA consults with state and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous Waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f)

Dated: November 9, 2004.

Carl E. Edlund,

Director, Multimedia Planning and Permitting Division, Region 6.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX of Part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste Description
*	*	* * * * *
Shell Oil Company	Deer Park, TX	Multisource landfill leachate (EPA Hazardous Waste No. F039) generated at a maximum annual rate of 3.36 million gallons (16,619 cu. yards) per calendar year after [insert publication date of the final rule] and disposed in accordance with the TPDES permit. The Delisting Levels set do not relieve Shell Oil Company of its duty to comply with the limits set in its TPDES permit. For the exclusion to be valid, Shell Oil Company must implement a verification testing program that meets the following Paragraphs: (1) *Delisting Levels*: All total concentrations for those constituents must not exceed the following levels (mg/l). The petitioner must analyze the aqueous waste on a total basis to measure constituents in the multisource landfill leachate. Multisource landfill leachate (i) Inorganic Constituents Antimony-0.0204; Arsenic-0.385; Barium-2.92; Copper-418.00; Chromium-5.0; Cobalt-2.25; Nickel-1.13; Selenium-0.0863; Thallium-0.005 (ii) Organic Constituents Acetone-1.46; Acrylonitrile-0.00745; Acetophenone-1.58; Benzene-0.0222; Cresol, p-0.0788; Bis(2-chlorethyl)ether-0.00583; Bis(2-ethylhexyl)phthlate-15800.00; Dichlorobenzene, 1,3–0.00478; Dichloroethane, 1,2–0.0803; Dimethoate-3.15; Dimethyphenol, 2,4–0.405; Dinitrophenol-0.0293; Dinitrotoluene, 2,4–0.00451; Dinitrololuene, 2,6–0.00451; Diphenylthydrazine-0.00484; Dichloroethylene, 1,1–0.00719; Ethylbenzene-4.51; Kepone-0.00407; Methacrylonitrile-0.00146; Methanol-7.32; Napthalene-1.05; Nitrobenzene 0.00788; Nitrosodiethylamine-0.000258; Nitrosodimethylamine-0.000076; Nitrosodi-n-butylamine-0.000826; N-Nitrosodi-n-propylamine-0.000553; N-Nitrosopiperdine-0.000102; N-Nitrosopyrrolidine-0.000841; N-Nitrosomethylethylamine-0.000176; PCB's-0.000841; Pentachlorophenol-1.58; Phenol-9.46; Pyridine-0.0146; 2,3,7,8-TCDD equivalents as TEQ–0.0000926; Trichloropropane-0.000574; Vinyl Chloride-0.0019; Xylenes (total)-97.60 (2) *Waste Management*: (A) Shell Oil Company must manage as hazardous all multisource landfill leachate generated, until it has completed initial verification testing described in Paragraph (3)(A) and (B), as appropriate, and valid analyses show that Paragraph(1) is satisfied. (B) Levels of constituents measured in the samples of the multisource landfill leachate that do not exceed the levels set forth in Paragraph (1) are non-hazardous. Shell Oil Company can manage and dispose of the non-hazardous multisource landfill leachate according to all applicable solid waste regulations. (C) If constituent levels in a sample exceed any of the Delisting Levels set in Paragraph (1), Shell Oil Company can collect one additional sample and perform expedited analyses to verify if the constituent exceeds the delisting level. If this sample confirms the exceedance, Shell Oil Company must, from that point forward, treat the waste as hazardous until it is demonstrated that the waste again meets the levels in Paragraph (1). (D) If the facility has not treated the waste, Shell Oil Company must manage and dispose of the waste generated under Subtitle C of RCRA from the time that it becomes aware of any exceedance. (E) Upon completion of the Verification Testing described in Paragraph 3(A) and (B) as appropriate and the transmittal of the results to EPA, and if the testing results meet the requirements of Paragraph (1), Shell Oil Company may proceed to manage its multisource landfill leachate as non-hazardous waste. If Subsequent Verification Testing indicates an exceedance of the Delisting Levels in Paragraph (1), Shell Oil Company must manage the multisource landfill leachate as a hazardous waste until two consecutive quarterly testing samples show levels below the Delisting Levels in Table I.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste Description
		(3) *Verification Testing Requirements*: Shell Oil Company must perform sample collection and analyses, including quality control procedures, according to appropriate methods such as those found in SW–846 or other reliable sources (with the exception of analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11, which must be used without substitution). If EPA judges the process to be effective under the operating conditions used during the initial verification testing, Shell Oil Company may replace the testing required in Paragraph (3)(A) with the testing required in Paragraph (3)(B). Shell Oil Company must continue to test as specified in Paragraph (3)(A) until and unless notified by EPA in writing that testing in Paragraph (3)(A) may be replaced by Paragraph (3)(B). (A) *Initial Verification Testing*: After EPA grants the final exclusion, Shell Oil Company must do the following: (i) Within 60 days of this exclusion becoming final, collect eight samples, before disposal, of the multisource landfill leachate. (ii) The samples are to be analyzed and compared against the Delisting Levels in Paragraph (1) (iii) Within sixty (60) days after this exclusion becomes final, Shell Oil Company will report initial verification analytical test data for the multisource landfill leachate, including analytical quality control information for the first thirty (30) days of operation after this exclusion becomes final. If levels of constituents measured in the samples of the multisource landfill leachate that do not exceed the levels set forth in Paragraph (1) are also non-hazardous in two consecutive quarters after the first thirty (30) days of operation after this exclusion become effective, Shell Oil Company can manage and dispose of the multisource landfill leachate according to all applicable solid waste regulations. (B) *Subsequent Verification Testing*: Following written notification by EPA, Shell Oil Company may substitute the testing conditions in (3)(B) for (3)(A). Shell Oil Company must continue to monitor operating conditions, and analyze two representative samples of the multisource landfill leachate for each quarter of operation during the first year of waste generation. The samples must represent the waste generated during the quarter. After the first year of analytical sampling verification sampling can be performed on a single annual sample of the multisource landfill leachate. The results are to be compared to the Delisting Levels in Condition (1). (C) *Termination of Testing*: (i) After the first year of quarterly testing, if the Delisting Levels in Paragraph (1) are being met, Shell Oil Company may then request that EPA not require quarterly testing. After EPA notifies Shell Oil Company in writing, the company may end quarterly testing. (ii) Following cancellation of the quarterly testing, Shell Oil Company must continue to test a representative sample for all constituents listed in Paragraph (1) annually. (4) *Changes in Operating Conditions*: If Shell Oil Company significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could significantly affect the composition or type of waste generated as established under Paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing; it may no longer handle the wastes generated from the new process as nonhazardous until the wastes meet the Delisting Levels set in Paragraph (1) and it has received written approval to do so from EPA. (5) *Data Submittals*: Shell Oil Company must submit the information described below. If Shell Oil Company fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. Shell Oil Company must: (A) Submit the data obtained through Paragraph 3 to the Section Chief, Region 6 Corrective Action and Waste Minimization Section, EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD-C) within the time specified. (B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when EPA or the state of Texas request them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. § 1001 and 42 U.S.C. § 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) *Reopener:*

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste Description
		(A) If, anytime after disposal of the delisted waste, Shell Oil Company possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, Shell Oil Company must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (C) If Shell Oil Company fails to submit the information described in Paragraphs (5),(6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Division Director determines that the reported information does require action, EPA's Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed action by EPA is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (E) Following the receipt of information from the facility described in Paragraph (6)(D) or (if no information is presented under Paragraph (6)(D)) the initial receipt of information described in Paragraphs (5), (6)(A) or (6)(B), the Division Director will issue a final written determination describing EPA's actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (7) *Notification Requirements*: Shell Oil Company must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if it ships the delisted waste into a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.
*	*	* * * * *

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU06

Endangered and Threatened Wildlife and Plants; Proposed Critical Habitat Designation for Four Vernal Pool Crustaceans and Eleven Vernal Pool Plants in California and Southern Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule, reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce that we are soliciting additional comments on certain areas included in our September 24, 2002, proposed rule (hereinafter referred to as the September 2002 proposal) to designate critical habitat for 4 vernal pool crustaceans and 11 vernal pool plants in California and southern Oregon (67 FR 59884). We issued a final rule based on the September 2002 proposal on August 6, 2003 (68 FR 46684). In the final rule we excluded certain specific lands that had been included in the September 2002 proposal. We excluded these lands pursuant to section 4(b)(2) of the Act based on either policy or economic reasons. On October 28, 2004, a court remanded the final designation to the Service in part, ordering the Service to make a new determination as to whether to designate the excluded areas (*Butte Environmental Council* v. *Norton,* NO. CIV. S–04–0096 (E.D. Cal. Oct. 28, 2004). The August 6, 2003, final rule is still in effect while we reconsider the exclusions from the proposed rule and make a new final determination. Pursuant to the court order, we will evaluate the exclusions made to our proposal in two separate actions: (1) A re-evaluation of exclusions based on policy or non-economic reasons addressed herein; and (2) a re-evaluation of exclusions based on economic concerns in a subsequent **Federal Register** notice. Comments previously submitted on the September 2002 proposal need not be resubmitted because we will incorporate them into the public record as part of this reopening of the comment period and will fully consider them in development of a new final rule.

DATES: We will accept public comments on the policy (non-economic) exclusions to our September 2002 proposal and any new information concerning the 15 vernal pool species addressed in this critical habitat designation until January 27, 2005.

ADDRESSES: If you wish to comment, you may submit your comments and materials by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, California 95825.

2. You may hand-deliver written comments and information to our Sacramento Fish and Wildlife Office, at the above address, or fax your comments to 916/414–6710.

3. You may send your comments by electronic mail (e-mail) to *fw1_vernalpool@fws.gov.* For directions on how to submit electronic filing of comments, see the ''Public Comments Solicited'' section below.

Comments and materials received, as well as supporting documentation used in preparation of the previous designation of critical habitat and economic analysis will be available for inspection, by appointment, during normal business hours at our office listed in the **ADDRESSES** section. Copies of the proposed and final designation of critical habitat for these 15 species as well as our economic analysis are also available on the Internet at *http://sacramento.fws.gov/* or by writing or calling Arnold Roessler, at the address or telephone number listed above.

FOR FURTHER INFORMATION CONTACT: Arnold Roessler, at the address above (telephone 916/414–6600; facsimile 916/414–6710).

SUPPLEMENTARY INFORMATION:

Background

On September 24, 2002, we published a proposed rule to designate critical habitat, pursuant to the Endangered Species Act of 1973, as amended (Act) for 4 vernal pool crustaceans and 11 vernal pool plants (67 FR 59884). The four vernal pool crustaceans involved in this critical habitat designation are the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool fairy shrimp (*Branchinecta lynchi*), and vernal pool tadpole shrimp (*Lepidurus packardi*). The 11 vernal pool plant species are Butte County meadowfoam (*Limnanthes floccosa* ssp. *californica*), Contra Costa goldfields (*Lasthenia conjugens*), Hoover's spurge (*Chamaesyce hooveri*), fleshy (or succulent) owl's-clover (*Castilleja campestris* ssp. *succulenta*), Colusa grass (*Neostapfia colusana)*, Greene's tuctoria (*Tuctoria greenei*), hairy Orcutt grass (*Orcuttia pilosa*), Sacramento Orcutt grass (*Orcuttia viscida*), San Joaquin Valley Orcutt grass (*Orcuttia inaequalis*), slender Orcutt grass (*Orcuttia tenuis*), and Solano grass (*Tuctoria mucronata*). We proposed a total of 128 units of critical habitat for these 15 vernal pool species, totaling approximately 672,920 hectares (ha) (1,662,762 acres (ac)) in 36 counties in California and one county in Oregon. In accordance with our regulations at 50 CFR 424.16(c)(2), we opened a 60-day comment period on this proposal, which closed on November 25, 2002.

All the species listed above live in vernal pools (shallow depressions that hold water seasonally), swales (shallow drainages that carry water seasonally), and ephemeral freshwater habitats. None are known to occur in riverine waters, marine waters, or other permanent bodies of water. The vernal pool habitats of these species have a discontinuous distribution west of the Sierra Nevada that extends from southern Oregon through California into northern Baja California, Mexico. The species have all adapted to the generally mild climate and seasonal periods of inundation and drying that help make the vernal pool ecosystems of California and southern Oregon unique.

Section 4(b)(2) of the Act requires that the Secretary of the Interior shall designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact to national security, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if she determines that the benefit of such exclusion outweighs the benefits of specifying such area as part of the critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species concerned. Thus, to fulfill our requirement to consider the potential economic impacts of the proposed designation of critical habitat for the 15 vernal pool species, we conducted an analysis of the potential economic impacts on the proposed designation and published a notice on November 21, 2002 (67 FR 70201), announcing the availability of our draft economic analysis. The notice opened a 30-day public comment period on the draft economic analysis, and extended the comment period on the proposed critical habitat designation.

During the development of the final designation, we reviewed the lands proposed as critical habitat based on public comments and any new information that may have become available and refined the boundaries of the proposal to remove lands determined not to be essential to the conservation of the 15 vernal pool species. We then took into consideration the potential economic impacts of the designation, impacts on national security, and other relevant factors such as partnerships and on-going management actions benefiting the species covered by the designation. Next, we determined that the benefits of excluding certain lands from the final designation of critical habitat for the 15 vernal pool species outweighed the benefit of including them in the designation, and the specific exclusions would not result in the extinction of any of the species involved. Lands excluded from the final designation based on policy and management plans or programs that provide a benefit to the species included: lands within specific National Wildlife Refuges and Fish Hatcheries; Department of Defense lands; Tribal lands; State Wildlife Areas and Ecological Reserves; and lands covered by habitat conservation plans or other management plans that provide a benefit for the species. We also excluded lands proposed as critical habitat in Butte, Madera, Merced, Sacramento, and Solano counties based on potential economic impacts. Thus, on July 15, 2003, we made a final determination of critical habitat for the 15 vernal pool species; the final rule was published in the **Federal Register** on August 6, 2003 (68 FR 46684). A total of approximately 1,184,513 ac (417,989 ha) of land falls within the boundaries of designated critical habitat (the area estimate does not reflect the exclusion of lands based on potential economic impacts from the five California counties).

In January 2004, Butte Environmental Council, and several other organizations, filed a complaint alleging that we: (1) Violated the Act, and the Administrative Procedure Act (APA), by excluding over 1 million acres from the final designation of critical habitat for the 15 vernal pool species; (2) violated mandatory notice-and-comment requirements under the Act and APA; and (3) have engaged in an unlawful pattern, practice, and policy by failing to properly consider the economic impacts of designating critical habitat. On October 28, 2004, the court signed a Memorandum and Order in that case. The Memorandum and Order remanded the final designation to the Service in part. In particular, the court ordered us to: (1) Reconsider the exclusions from the final designation of critical habitat for the 15 vernal pool species, with the exception of those lands within the 5 California counties that were excluded based on potential economic impacts, and publish a new final determination as to those lands within 120 days; and (2) reconsider the exclusion of the five

California counties based on potential economic impacts and publish a new final determination no later than July 31, 2005. The court also made it clear that the partial remand would not affect the areas included in the August 6, 2003, final designation. This notice addresses the first requirement of the remand—the reconsideration of the exclusions from the final designation of critical habitat for the 15 vernal pool species, with the exception of those lands within the 5 California counties that were excluded based on potential economic impacts, and reopens the public comment period. The second requirement of the order, concerning the economic exclusions, will be addressed through a future **Federal Register** notice.

We are hereby reopening the public comment period on our September 2002 proposal for 30 days to solicit comments and any new information concerning the non-economic exclusions that were made during the development of the final designation of critical habitat for the 15 vernal pool species. To facilitate this process, Table 1 lists each specific area that was excluded from the proposed designation of critical habitat for the 15 vernal pool species based on policy by category and size.

TABLE 1.—APPROXIMATE AREAS OF CRITICAL HABITAT EXCLUSIONS FOR THE VERNAL POOL CRUSTACEANS AND PLANTS IN CALIFORNIA AND OREGON

Exclusion Area	Acres	Hectares
National Wildlife Refuges (NWR) and Fish Hatchery Exclusions		
Sacramento NWR Complex	19,363	7,836
San Francisco Bay NWR	617	250
San Luis NWR Complex	18,014	7,290
Kern NWR Complex	4,894	1,980
Coleman Nat. Fish Hatchery	13	5
Total	42,914	17,367
Department of Defense Exclusions		
Beale Air Force Base	10,033	4,060
Travis Air Force Base	9,651	3,906
Fort Hunter Liggett	16,583	6,711
Camp Roberts	33,937	13,734
Total	70,204	28,410
Tribal Land Exclusions		
Mechoopda Tribe	644	261
Total	644	261
State Wildlife Areas (WA) and Ecological Reserve (ER) Exclusions		
Allensworth ER	1,141	462
Battle Creek WA	637	258
Big Sandy WA	478	194
Boggs Lake ER	50	20
Butte Creek Canyon ER	0.4	0.16
Calhoun Cut ER	3,021	1,223
Carrizo Plains ER	455	184
Dales Lake ER	754	305
Fagen Marsh ER	420	170
Grizzly Island WA	10	4
Hill Slough WA	1,559	631
North Grasslands WA	5	2
Oroville WA	39	16
Phoenix Field ER	7	3
San Joaquin River ER	278	113
Stone Corral ER	3,074	1,244
Thomes Creek ER	447	181
Total	12,373	5,007
Habitat Conservation Plans (HCP) and Cooperatively Managed Land Exclusions		
Skunk Hollow HCP	239	97
Western Riverside Multiple Species HCP	5,730	2,319
Santa Rosa Plateau Ecological Reserve	4,246	1,718
San Joaquin County Multiple Species HCP	10	4
Total	10,224	4,138
Grand Total	136,358	55,182

Public Comment Solicited

We intend that any final action resulting from our September 2002 proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the portion of the proposed rule subject to the court's remand order. On the basis of public comment, during the development of our new, partial final determination we may find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2), or not appropriate for exclusion; in all of these cases, this information would be incorporated into our new final determination with respect to those areas. We particularly seek comments concerning:

(1) Specific information on the amount and distribution of habitat for the 15 vernal pool species, and what habitat is essential to the conservation of the species and why;

(2) The reasons why any areas should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Information related to the benefits of designating any of these areas as critical habitat for the 15 vernal pool species;

(4) Information related to the benefits of excluding any of these areas as critical habitat for the 15 vernal pool species;

(5) Land use designations and current or planned activities in or adjacent to the areas proposed, and their possible impacts on proposed critical habitat;

(6) Land use designations and current or planned activities in or adjacent to the areas proposed, and the possible impacts on those uses and activities from a critical habitat designation;

(7) Any foreseeable economic or other potential impacts resulting from the proposed designation, including any impacts on small entities; and

(8) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit electronic comments in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: RIN 1018–AUO6'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Sacramento Fish and Wildlife Office at telephone number 916/414–6600, during normal business hours.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: December 17, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–28164 Filed 12–27–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AJ09

Endangered and Threatened Wildlife and Plants; Notice of Availability of Draft Economic Analysis and Reopening of the Public Comment Period for the Proposed Designation of Critical Habitat for *Astragalus lentiginosus* var. *piscinensis* (Fish Slough Milk-vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability of draft economic analysis and reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft economic analysis for the proposed designation of critical habitat for the federally threatened *Astragalus lentiginosus* var. *piscinensis* (Fish Slough milk-vetch), and the reopening of the public comment period on the proposed rule to designate critical habitat for this taxon. The comment period will provide the public, Federal, State, and local agencies, and Tribes with an opportunity to submit written comments on this proposal and its respective draft economic analysis. Comments previously submitted on the proposed rule need not be resubmitted as they have been incorporated into the public record as a part of this reopening of the comment period, and will be fully considered in preparation of the final rule.

DATES: We will accept all comments and information until 5 p.m. on or before January 27, 2005. Any comments that we receive after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: Written comments and materials may be submitted to us by one of the following methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003.

(2) You may hand-deliver written comments and information to our Ventura Fish and Wildlife Office, at the above address, or fax your comments to 805/644–3958.

(3) You may send comments by electronic mail (e-mail) to: *fw1fsmv_pch@r1.fws.gov*. Please see the Public Comments Solicited section below for file format and other information about electronic filing.

Comments and materials received, as well as supporting documentation used in preparation of the proposed critical habitat rule for *Astragalus lentiginosus* var. *piscinensis* (69 FR 31552), will be available for public inspection, by appointment, during normal business hours at the above address. You may obtain copies of the draft economic analysis for this taxon by contacting the Ventura Fish and Wildlife Office at the above address. The draft economic analysis and the proposed rule for critical habitat designation also are available on the Internet at *http://*

ventura.fws.gov/. In the event that our Internet connection is not functional, please obtain copies for documents directly from the Ventura Fish and Wildlife Office.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Threloff, Ventura Fish and Wildlife Office, at the address listed above (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we solicit comments and information from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the draft economic analysis or the proposed rule to designate critical habitat for *Astragalus lentiginosus* var. *piscinensis* (69 FR 31552). We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of exclusion outweigh the benefits of specifying such area as part of the critical habitat;

(2) Specific information on the amount and distribution of *Astragalus lentiginosus* var. *piscinensis* habitat, and what habitat is essential to the conservation of this species and why;

(3) Land use designations and current or planned activities in the subject area and their possible impacts on proposed habitat, and whether the proposed area may need special management or protection;

(4) Current or planned water withdrawals or diversions in or adjacent to the area proposed, or in more distant areas, that could impact the hydrology of Fish Slough, the nature of any impacts from these withdrawals, and whether there is a Federal nexus to such withdrawals that could result in consultations under section 7 of the Act, or a similar requirement under State law;

(5) Any foreseeable economic, national security or other potential impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(6) Additional information that can be used to characterize or more completely understand the regional aquifer that supports aquatic or riparian habitat in Fish Slough, or how local ground water pumping activities affect the hydrology of Fish Slough;

(7) Information on how many of the State and local environmental protection measures referenced in the draft economic analysis were adopted largely as a result of the listing of *Astragalus lentiginosus* var. *piscinensis*, and how many were either already in place or enacted for other reasons;

(8) Whether the economic analysis identifies all State and local costs attributable to the proposed critical habitat designation. If not, what costs are overlooked;

(9) Whether the economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(10) Whether the economic analysis correctly assesses the effect on regional costs associated with water and land use controls that derive from the designation;

(11) Whether the designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from the final designation;

(12) Whether the economic analysis appropriately identifies all costs that could result from the designation; and

(13) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

All comments and information submitted during the initial comment period on the proposed rule need not be resubmitted. If you wish to comment, you may submit your comments and materials concerning the draft economic analysis and the proposed rule by any one of several methods (*see* **ADDRESSES** section).

Please submit Internet comments to *fw1fsmv_pch@r1.fws.gov* in an ASCII file format and avoid the use of special characters and encryption. Please also include ''Attn: Fish Slough Milk-vetch Critical Habitat'' in your e-mail subject header, and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Ventura Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours, in our Ventura Fish and Wildlife Office at the above address.

Background

Astragalus lentiginosus var. *piscinensis* is a prostrate perennial, with few-branching stems that are up to 39 inches (1 meter) in length and covered with stiff, appressed hairs. We listed *A. l.* var. *piscinensis* as threatened under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) on October 6, 1998 (63 FR 53596). Please refer to the final listing rule for a more detailed discussion of the species' taxonomic history and description.

On June 4, 2004, we published a proposed rule in the **Federal Register** (69 FR 31552) to designate critical habitat for *Astragalus lentiginosus* var. *piscinensis*. We proposed to designate a total of approximately 8,490 acres (3,435 hectares) of critical habitat in Inyo and Mono Counties, CA. The first comment period on the proposed critical habitat rule for *A. l.* var. *piscinensis* closed on August 3, 2004.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act. We note, however, that a recent 9th Circuit judicial opinion, *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service,* has invalidated the Service's regulation defining destruction or adverse

modification of critical habitat. We are currently reviewing the decision to determine what effect it may have on the outcome of consultations pursuant to Section 7 of the Act.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat on the basis of the best scientific and commercial data available, after taking into consideration the economic impact, impact to national security, and any other relevant impacts of specifying any particular area as critical habitat. We have prepared a draft economic analysis for the proposal to designate certain areas as critical habitat for *Astragalus lentiginosus* var. *piscinensis*. This analysis considers the potential economic effects of our proposed designation, and the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation in areas proposed for designation.

Approximately 64 percent of the proposed critical habitat designation is under Federal ownership, 34 percent is owned by the city of Los Angeles, and 2 percent is State owned. The economic analysis addresses the effects of conservation efforts for *Astragalus lentiginosus* var. *piscinensis* on activities occurring on lands proposed for designation. This economic analysis focuses on the following activities as being potentially affected by conservation considerations for *A. l.* var. *piscinensis*: agricultural production, livestock grazing, recreation, commercial mining, groundwater exportation, and resource management activities in the Bureau of Land Management-designated Area of Critical Environmental Concern where *A. l.* var. *piscinensis* occurs.

Because of some uncertainty in estimating the effects of conservation activities related to Astragalus lentiginosus var. piscinensis, the economic analysis includes an upper and lower-bound cost estimate. The analysis includes both ''pre-designation'' (occurring from the time of the listing of *A. l.* var. *piscinensis* to final designation of critical habitat) and ''post-designation'' (forecast to occur from 2005 to 2025) economic impacts. Estimated pre-designation costs range from $749,000 to $808,000. Total post-designation costs are approximately $946,000 to $978,000 (or $501,000 to $518,000 in present value terms and $47,300 to $48,900 on an annualized basis over the 20-year post-designation analysis period).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this proposed designation of critical habitat is a significant rule only in that the Office of Management and Budget (OMB) has determined that it may raise novel legal and policy issues. However, the economic analysis indicates that the proposed designation will not have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, OMB has not formally reviewed this rule.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. The SBREFA also amended the RFA to require a certification statement. We are hereby certifying that this proposed rule will not have a significant economic impact on a substantial number of small entities, as explained below.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation if they lack a Federal nexus. In areas where the species is present, Federal agencies funding, permitting, or implementing activities are already required to avoid jeopardizing the continued existence of *Astragalus lentiginosus* var. *piscinensis* through consultation with us under section 7 of the Act. If this critical habitat designation is finalized, Federal agencies must also consult with us to ensure that their activities do not destroy or adversely modify designated critical habitat.

Should a federally funded, permitted, or implemented project be proposed that may affect designated critical habitat, we will work with the Federal action agency and any applicant, through section 7 consultation, to identify ways to implement the proposed project while minimizing or avoiding any adverse effect to the species or critical habitat. In our experience, the vast majority of such projects can be successfully implemented with at most minor changes that avoid significant economic impacts to project proponents.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. The kinds of actions that may be included in future reasonable and prudent

alternatives include avoidance, conservation set-asides, management of competing non-native species, restoration of degraded habitat, construction of protective fencing, and regular monitoring. These measures are not likely to result in a significant economic impact to project proponents.

In the case of *Astragalus lentiginosus* var. *piscinensis*, we anticipate that the proposed designation of critical habitat is not likely to have a significant economic impact on any small entities or classes of small entities. The only section 7 consultations since the taxon was listed have been associated with U.S. Army Corps of Engineers Section 404 permitting of the removal and re-construction of fish barriers at three springs. No post-designation section 7 consultations are currently anticipated for this taxon. The costs presented in the economic analysis reflect, where data permit, ranges representing the reasonably foreseeable future. All post-designation costs are anticipated to be direct costs of projects intended to benefit *A. l.* var. *piscinensis*.

We considered the potential relative cost of compliance to small entities and evaluated only small entities that are expected to be directly affected by the proposed designation of critical habitat. Based on the economic analysis for *A. l.* var. *piscinensis*, we do not anticipate that the proposed designation of critical habitat will result in increased compliance costs for small entities. The business activities of these small entities and their effects on *Astragalus lentiginosus* var. *piscinensis* or its proposed critical habitat have not directly triggered a section 7 consultation with the Service under the jeopardy standard and likely would not trigger a section 7 consultation under the adverse modification standard after designation of critical habitat. The proposed designation of critical habitat does not, therefore, create a new cost for the small entities to comply with the proposed designation. Instead, proposed designation only impacts Federal agencies that conduct, fund, or permit activities that may affect critical habitat for *A. l.* var. *piscinensis*.

In summary, we have considered whether this proposed designation would result in a significant economic impact on a substantial number of small entities, and we have concluded that it would not. No future consultations are currently anticipated, and we have no indication that the types of activities that we review under section 7 of the Act will change significantly in the future. Thus, we conclude that the proposed designation of critical habitat for *Astragalus lentiginosus* var. *piscinensis* is not likely to result in a significant impact to this group of small entities. Therefore, we are certifying that the proposed designation of critical habitat for *A. l.* var. *piscinensis* will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.)

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. The economic analysis indicates that the proposed designation will not have an annual effect on the economy of $100 million or more. In addition, lands proposed for designation include only Federal, State, and City-owned lands; the majority of forecast economic impacts are anticipated to be associated with direct costs to Federal, State, and municipal agencies. Therefore, we believe that this critical habitat designation will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for *Astragalus lentiginosus* var. *piscinensis*. Our assessment concludes that this proposed rule does not pose significant takings implications.

Author

The primary author of this notice is the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: December 17, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–28163 Filed 12–27–04; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 69, No. 248

Tuesday, December 28, 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 22, 2004.

The Department of Agriculture has submitted the following information collection requirements(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *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.

Farm Service Agency

Title: Request for Aerial Photography.

OMB Control Number: 0560–0176.

Summary of Collection: The Farm Service Agency (FSA) Aerial Photography Field Office (APFO) has the authority to coordinate aerial photography work in USDA, develop and carry out aerial photography and remote sensing programs and the Agency's aerial photography flying contract programs. The film secured by FSA is public domain and reproductions are available at cost to any customer with a need. The FSA–441, Request for Aerial Imagery, is the form FSA supplies to its customers when placing an order for aerial photography products and services.

Need and Use of the Information: FSA will collect the name, address, contact name, telephone, fax, e-mail, customer code, agency code, purchase order number, credit card number/exp. date and amount remitted/PO amount. Customers have the option of placing orders by mail, fax, telephone, walk-in or floppy disk. Furnishing this information requires the customer to research and prepare their request before submitting it to APFO.

Description of Respondents: Farms, Individuals or household; Business or other for-profit; Federal Government; State, local or tribal government.

Number of Respondents: 12,000.

Frequency of Responses: Reporting; Other (when ordering).

Total Burden Hours: 8,000.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 04–28370 Filed 12–27–04; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 22, 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) way 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.

Animal Plant and Health Inspection Service

Title: Update of the Nursery Stock Regulations.

OMB Control Number: 0579–0190.

Summary of Collection: The Plant Protection and Quarantine, a program within the Animal and Plant Health Inspection Service (APHIS) is responsible for implementing the Plant Protection Act (PPA) (7 U.S.C. 7701–7772). Regulations authorized by the PPA concerning the importation of nursery stock, plants, roots, bulbs, seeds, and other plant products are contained in Title 7 of the Code of Federal Regulations, ''Nursery Stock,'' 319.37 through 319.34–14. Implementing the nursery stock regulations requires APHIS to collect

information from a variety of individuals who are involved in growing, exporting, and importing nursery stock.

Need and Use of the Information: APHIS will collect information to ensure that plant pest are not introduced into the United States. The information APHIS collects serves as the supporting documentation needed to issue required PPQ forms and documents that allow importation of nursery stock.

Description of Respondents: Business or other for-profit; State, local or tribal government; Individuals or households; Farms.

Number of Respondents: 20.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 10.

Animal Plant and Health Inspection Service

Title: Environmental Monitoring Form.

OMB Control Number: 0579–0117.

Summary of Collection: The mission of the Animal and Plant Health Inspection Service (APHIS) is to provide leadership in ensuring the health and care of animals and plants, to improve the agricultural productivity and competitiveness, and to contribute to the national economy and the public health. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq, and the regulations of the Council on Environmental Quality, which implements the procedural aspects of NEPA (40 CFR 1500–1508) requires APHIS to implement environmental monitoring for certain activities conducted for pest and disease, control and eradication programs. APHIS form 2060, Environmental Monitoring Form, will be used to collect information concerning the effects of pesticide used in sensitive habitats.

Need and Use of the Information: APHIS will collect information on the number of collected samples, description of the samples, the environmental conditions at the collection site including wind speed and direction, temperature, humidity of rainfall, and topography. The supporting information contained on the APHIS form 2060 is vital for interpreting the laboratory tests APHIS conducts on its collected samples. Failure to collect this information would prevent APHIS from actively monitoring the effects of pesticides in areas where the inappropriate use of these chemicals could eventually produce disastrous results for vulnerable habitats and species.

Description of Respondents: State, local or tribal government; Individuals or households; Farms.

Number of Respondents: 150.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,500.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 04–28386 Filed 12–27–04; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), approved a petition for trade adjustment assistance (TAA) that was filed on November 18, 2004, by the Louisiana Shrimp Association, Grand Isle, Louisiana. The certification date is January 10, 2005. Beginning on this date, shrimpers who land their catch in Louisiana will be eligible to apply for fiscal year 2005 benefits during an application period ending April 11, 2005.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that increased imports of farmed shrimp contributed importantly to a decline in the landed prices of shrimp in Louisiana by 27.5 percent during January 2003 through December 2003, when compared with the previous 5-year average.

Eligible producers must apply to the Farm Service Agency for benefits. After submitting completed applications, producers shall receive technical assistance provided by the Extension Service at no cost and may receive an adjustment assistance payment, if certain program criteria are satisfied. Applicants must obtain the technical assistance from the Extension Service by July 11, 2005, in order to be eligible for financial payments.

Producers of raw agricultural commodities wishing to learn more about TAA and how they may apply should contact the Department of Agriculture at the addresses provided below for General Information.

Producers Certified as Eligible for TAA, Contact: Farm Service Agency service centers in Louisiana.

For General Information About TAA, Contact: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, email: *trade.adjustment@fas.usda.gov.*

Dated: December 15, 2004.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–28277 Filed 12–27–04; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), approved for a subsequent year the trade adjustment assistance (TAA) petition that was filed by the Organized Seafood Association of Alabama, Inc., on behalf of Alabama shrimpers and initially certified on January 12, 2004. The re-certification date is January 10, 2005. Beginning on this date, shrimpers who land their catch in Alabama will be eligible to apply for fiscal year 2005 benefits during an application period ending on April 11, 2005.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that imports of farmed shrimp contributed importantly to a decline in the average landed price of shrimp in Alabama by 23.4 percent during the 2003 marketing period (January–December), compared to the 1997–2001 base period.

Eligible producers must apply to the Farm Service Agency for benefits. After submitting completed applications, producers shall receive technical assistance provided by the Extension Service at no cost and may receive an adjustment assistance payment, if certain program criteria are satisfied. Applicants in fiscal year 2005, who did not receive technical assistance under the fiscal year 2004 TAA program, must obtain the technical assistance from the Extension Service by July 11, 2005, in order to be eligible for financial payments.

Producers of raw agricultural commodities wishing to learn more about TAA and how they may apply should contact the Department of Agriculture at the addresses provided below for General Information.

Producers Certified as Eligible for TAA, Contact: Farm Service Agency service centers.

For General Information About TAA, Contact: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, email: *trade.adjustment@fas.usda.gov.*

Dated: December 15, 2004.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–28278 Filed 12–27–04; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Perceived and Realized Health Benefits of Urban Proximate and Distant Recreation Lands

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 the new information collection, Perceived and Realized Health Benefits of Urban Proximate and Distant Recreation Lands.

DATES: Comments must be received in writing on or before February 28, 2004 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. Deborah Chavez, Pacific Southwest Research Station, Forest Service, USDA, 4955 Canyon Crest Drive, Riverside, CA 92507.

Comments also may be submitted via facsimile to (951) 680–1501 or by e-mail to *dchavez@fs.fed.us.*

The public may inspect comments received at Pacific Southwest Research Station, 4955 Canyon Crest Drive, Riverside, California, during normal business hours. Visitors are encouraged to call ahead to (951) 680–1558 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Dr. Deborah Chavez, Pacific Southwest Research Station at (951) 680–1558. 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: Perceived and Realized Health Benefits of Urban Proximate and Distant Recreation Lands.

OMB Number: 0596–New.

Expiration Date of Approval: N/A.

Type of Request: New.

Abstract: In June 2002, President Bush issued Executive Order (E.O.) 13266 for the purpose of improving the health of all Americans. Physical activity was one of the four health-protection pillars, and part of this E.O. encouraged federal agencies to promote physical activity on public lands.

Users of urban public lands come from a variety of ethnic, racial, income, age, educational, and other socio-demographic backgrounds. The activities pursued, health benefits realized, information sources utilized, and site attributes preferred are just some of the items affected by these differences.

The collected information will enable Forest Service personnel to more effectively manage recreation areas for the encouragement and promotion of potential physical health benefits. The collected information also will provide information on visitor characteristics, such as educational level, race, ethnicity, and gender, and communication, such as preferred language at home, and for radio, television, and newspapers.

Data will be collected using on-site surveys from visitors to urban parks and more distant watershed sites in or within an hour's drive of Los Angeles, California; Minneapolis-St. Paul, Minnesota; and Chicago, Illinois. Subjects will be contacted by Forest Service research personnel; cooperators at the University of Minnesota, Department of Forest Resources and Tourism Center; the University of Illinois, Department of Leisure Studies; and park research staff site collaborators at Hawkins Park in California.

Respondents will be asked to answer questions on the following topics: Area visitation history and patterns; activity patterns; site amenities and characteristics; constraints to more frequent visitation, such as physical health; and demographics. The data will be analyzed by Forest Service research personnel and cooperators at the University of Minnesota, Department of Forest Resources and Tourism Center, and the University of Illinois, Department of Leisure Studies.

Estimate of Annual Burden: 10 minutes.

Type of Respondents: Visitors to urban parks and more distant watershed sites within an hour's drive of Los Angeles, California; Minneapolis-St. Paul, Minnesota; and Chicago, Illinois.

Estimated Annual Number of Respondents: 2,700.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 450 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 for Office of Management and Budget approval.

Dated: November 22, 2004.

Barbara C. Weber,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 04–28243 Filed 12–27–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Deep Lake Allotment, Coconino National Forest; Coconino County, AZ

AGENCY: Forest Services, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) to disclose the environmental effects of reauthorizing cattle grazing on the Deep Lake Allotment.

DATES: Comments concerning the scope of the analysis should be received within 30 days of the date of publication of this Notice of Intent in the **Federal Register**. The draft EIS is expected in May 2005 and the final EIS is expected September 2005.

ADDRESSES: Send written comments to Terri Marceron, Mormon Lake District Ranger, 4373 South Lake Mary Road, Flagstaff, Arizona 86001, Fax: (928) 214–2460, E-mail: *comments-*

southwestern-coconino-mormon-lake@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Katherine Sánchez Meador, Range Specialist, Peaks Ranger District, 5075 N Highway 89, Flagstaff, Arizona 86004, (928) 526–0866.

SUPPLEMENTARY INFORMATION: The Deep Lake Allotment is a small grazing allotment located approximately nine miles southeast of Flagstaff, Arizona and along the northeastern edge of Anderson Mesa. The allotment consists of approximately 11,010 acres, most of which are in one main pasture. The current allotment permit is for 105 cattle from May 1 to October 31.

Primary vegetation on the Deep Lake Allotment consists of pinyon-juniper woodland that extends above and below the Anderson Mesa Rim. Deep Lake is the only semi-permanent wetland within the allotment. A band of ponderosa pine is found along the Anderson Mesa Rim and Mormon Canyon. Pronghorn habitat is limited and of poor quality because it consists of only small, isolated meadows within the northern portion of the allotment.

The Deep Lake Allotment is scheduled for environmental analysis of grazing use on the Coconino National Forest, as required by the Burns Amendment (1995). This project is being completed in order to ensure cattle grazing on the Deep Lake Allotment is consistent with goals, objectives, and the standards and guidelines of the Coconino National Forest Plan (1987, as amended).

Purpose and Need for Action

The purpose of this project is to analyze the effects of reauthorizing cattle grazing on the Deep Lake Allotment and to ensure the allotment is managed in a manner that moves the area toward Forest Plan objectives and desired conditions. The analysis will help determine whether or not to reauthorize cattle grazing and set grazing levels within the carrying capacity for the allotment. (Carrying capacity refers to the average number of cattle and/or wildlife that may be sustained on a management unit, i.e. an allotment, compatible with management objectives for the unit.)

There is a need to continue maintaining and improving rangeland conditions on the Deep Lake Allotment. Recent monitoring indicates current cattle grazing management is maintaining or improving rangeland conditions where cattle grazing occurs. New fencing is also needed around stock tanks for better distribution of cattle.

Proposed Action

The Mormon Lake Ranger District of the Coconino National Forest proposes to reauthorize cattle grazing for up to 105 cattle on the Deep Lake Allotment from May 1 through October 31. The authorization would be through a term grazing permit.

Five waterlots would be built around five stock tanks. These waterlots would be designed so water is accessible to wildlife, which would include a smooth bottom wire, 18 inches high, as well as wildlife jumps on all side. The waterlots would allow the permittee to control access to water for cattle at these stock tanks. By closing or opening up these stock tanks for cattle, the permittee can improve management of when and where cattle graze in the main pasture. The waterlots would allow the permittee the ability to control access to water for cattle and improve management of when and where cattle graze. Rangeland conditions on the allotment would improve with better cattle distribution.

The emergent vegetation and the surrounding upland buffer at Deep Lake will be excluded from cattle grazing by fencing approximately 29 acres of emergent vegetation and 54 acres of upland buffer. There will be a lane for cattle to access the stock tank water at Deep Lake which will have approximately two acres of emergent vegetation and six acres of upland buffer. The lane would maintain the permittee's current (livestock) water claim at Deep Lake. The bulrush plant community in Deep Lake should improve when cattle are excluded.

Utilization standards would be set for up to 35% by cattle and/or elk during the cattle grazing season. When allotment use approaches 35% by cattle and/or elk, cattle would be moved to another portion of the allotment. Once this use standard is met across the allotment, by cattle and/or elk, cattle would be moved off the allotment.

The Proposed Action includes adaptive management, which provides more flexibility for managing cattle. This would be accomplished through changes in timing and duration of grazing, movement of cattle within the allotment, and cattle numbers. If adjustments are needed, they are implemented through the Annual Operating Instructions which would adjust numbers so cattle use is consistent with current productivity. This allows plant, soil, and watershed conditions to be maintained or improved while range improvements are implemented over time. An example of a situation that could call for adaptive management adjustments is continued drought conditions.

Future monitoring will evaluate rangeland condition. Monitoring and the timing for this monitoring over the next ten years would include: Permittee compliance, allotment inspections, range readiness, forage production, and rangeland utilization (annually); condition and trend (every five to ten years); soil and riparian condition including wetlands, threatened, endangered, and sensitive species habitat (annually); archeological site condition (as needed); frequency and canopy cover plots and a soil condition rating would be continued or established at long-term monitoring sites, in areas of concern or in areas where changes in trend are expected or needed throughout the allotment.

Possible Alternatives

In addition to the Proposed Action, two other alternatives will initially be analyzed. One alternative (Current Management) will consider the effects of continuing the current cattle grazing management system on the allotment. Another alternative (No Action/No Grazing) will consider the effects of temporarily closing the Deep Lake Allotment to cattle grazing for a ten-year period. The development of any other alternatives will be completed following public response to scoping and published in the draft EIS.

Responsible Official

The responsible official for this project is the Mormon Lake District Ranger.

Nature of Decision To Be Made

The Mormon Lake District Ranger will decide whether or not to reauthorize cattle grazing and in what manner as described in the proposed action, alternatives to the proposed action, or current cattle management. The reauthorization of cattle grazing would be for a minimum of ten years. However, future NEPA for additional projects within the Deep Lake Allotment area, changing rangeland condition, or violations of the term grazing permit could change the length of this decision.

Scoping Process

Public questions and comments regarding this proposal are an integral part of this environmental analysis process. Comments will be used to identify issues and develop alternatives to the proposed action. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. A copy of this

Notice of Intent will be mailed to landowners within and immediately adjacent to the allotment area, as well as those people and organizations on the Coconino National Forest's mailing list that have indicated a specific interest in the Deep Lake Allotment area or grazing management in general. The public will be notified of any meetings regarding this proposal by mailings and press releases sent to the local newspaper and media. There are no meetings planned at this time.

Comments Requested

This Notice of Intent initiates the scoping process under NEPA, which will guide development of the EIS. Comments concerning the scope of this project should be received within 30 days of the date of publication of this Notice of Intent. Our desire is to receive substantive comments on the merits of the Proposed Action, as well as comments that address errors, misinformation, or information that has been omitted. Substantive comments are defined as comments within the scope of the proposal have a direct relationship to the proposal, and that include supporting reasons for the Responsible Official's consideration.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft EIS will be prepared for comment. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality.

Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and if the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.)

Dated: December 14, 2004.

Nora B. Rasure,

Forest Supervisor, Coconino National Forest.

[FR Doc. 04–28344 Filed 12–27–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee will meet on Wednesday, January 12, 2005, at the Okanogan and Wenatchee National Forests headquarters office, 215 Melody Lane, Wenatchee, Washington. The meeting will begin at 9 a.m. and continue until 3 p.m. During this meeting we will share information on new developments relating to the Northwest Forest Plan, learn about Hungry Hunter Stewardship Bidding results, discuss recreating planning for the Hungry Hunter area, and receive input on the White Pass Ski Area Expansion Draft Environmental Impact Statement. All Eastern Washington Cascades and Yakima Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–664–9200.

Dated: December 17, 2004.

Paul Hart,

Designated Federal Official, Okanogan and Wenatchee National Forests.

[FR Doc. 04–28246 Filed 12–27–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Sacramento Provincial Advisory Committee (SAC PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Provincial Advisory Committee (PAC) will meet on January 13, 2005, at Red Bluff, California. The purpose of the meeting is to discuss issues relating to implementing the Northwest Forest Plan.

DATES: The meeting will be held on January 13, 2005.

Location: The meeting will be held in the Conference Room at the Fish and Wildlife Service office at 10950 Tyler Road, Red Bluff, CA.

FOR FURTHER INFORMATION CONTACT: Julie Nelson, Committee Coordinator, USDA, Shasta-Trinity National Forest, 3644 Avtech Parkway, Redding, CA 96002 (530) 226–2429; or by e-mail: *jknelson@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public.

Opportunity will be provided for public input and individuals will have the opportunity to address the Committee at that time.

Dated: December 17, 2004.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 04–28372 Filed 12–27–04; 8:45 am]

BILLING CODE 3410–FK–M

DEPARTMENT OF AGRICULTURE

Opal Creek Scenic Recreation Area (SRA) Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: An Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Stayton, Oregon on Wednesday, January 26, 2005. The meeting is scheduled to begin at 6:30 p.m., and will conclude at approximately 8:30 p.m. The meeting will be held in the South Room of the Stayton Community Center located on 400 West Virginia Street in Stayton, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (Pub. L. 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a periodic and regular basis on the management of the area. Tentative agenda items include: Current project updates; begin identifying new projects using Council's project ranking process, and discuss District program of work.

A direct public comment period is tentatively scheduled to begin at 8 p.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the January 26th by sending them to Designated Federal Official Paul Matter at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Paul Matter; Willamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854–3366.

Dated: December 20, 2004.

Dallas J. Emch,

Forest Supervisor.

[FR Doc. 04–28245 Filed 12–27–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) County Supervisor Report (5) Vote on Reglan Ridge Project, (6) Status of Committee Assignments, (7) Report of Projects Funded, (8) General Discussion, (9) Next Agenda.

DATES: The meeting will be held on January 13, 2005, from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; E-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by January 10, 2005, will have the opportunity to address the committee at those sessions.

Dated: December 21, 2004.

Robert McCabe,

Acting Designated Federal Official.

[FR Doc. 04–28304 Filed 12–27–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Update on Roads Analysis, (5) Web site Update, (6) Water Assessment on Stony Creek, (7) General Discussion, (8) Next Agenda.

DATES: The meeting will be held on January 24, 2005, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by January 21, 2005, will have the opportunity to address the Committee at those sessions.

Dated: December 21, 2004.

Robert McCabe,

Acting Designated Federal Official.

[FR Doc. 04–28305 Filed 12–27–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Shasta County Resource Advisory Committee (RAC) will meet at the USDA Service Center in Redding, California, on January 5, February 4, and March 3 of 2005. The purpose of this meeting is to discuss proposed projects under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: January 5, February 4, and March 3, of 2005.

ADDRESSES: The meetings will be held at the USDA Service Center, 3644 Avtech Parkway, Redding, California 96002.

FOR FURTHER INFORMATION CONTACT: Michael R. Odle, Asst. Public Affairs Officer and RAC Coordinator.

SUPPLEMENTARY INFORMATION: The meetings are open to the public. Public input sessions will be provided and individuals will have the opportunity to address the Shasta County Resource Advisory Committee.

Dated: December 17, 2004.

J. Sharon Heywood,

Forest Supervisor, Shasta-Trinity National Forest.

[FR Doc. 04–28371 Filed 12–27–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee will meet in Ketchikan, Alaska, February 17, 2005. The purpose of this meeting is to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: The meeting will be held February 17, 2005.

ADDRESSES: The meeting will be held at the Southeast Alaska Discovery Center Theater (front entrance), 50 Main Street, Ketchikan, Alaska. Send written comments to Ketchikan Resource Advisory Committee, c/o Acting District Ranger, USDA Forest Service, 3031 Tongass Ave., Ketchikan, AK 99901, or electronically to *ikolund@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Lynn Kolund, Acting District Ranger, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, (907) 228–4100.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: December 14, 2004.

Forrest Cole,

Forest Supervisor.

[FR Doc. 04–28373 Filed 12–27–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Privacy Act of 1974; Abolish Obsolete System of Records

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Forest Service has reviewed the Forest Service system of records, USDA/FS–43, Emergency Fire Mobilization Plan Director, and concluded that the system is obsolete. That system is being abolished from the Forest Service Systems of Records in accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This notice is effective on December 28, 2004.

ADDRESSES: For additional information contact Rita Morgan, Freedom of Information and Privacy Act Officer, Forest Service, USDA, 1400 Independence Avenue, SW., Mail Stop 1143, Washington, DC 20250–1143.

FOR FURTHER INFORMATION CONTACT: Rita Morgan, Freedom of Information and Privacy Act Officer, at (703) 605–4913.

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974 (5 U.S.C. 552a), as amended, requires that each agency publish a notice of the existence and character of each new or altered ''system of records.'' 5 U.S.C. 552a(a)(5). This Notice identifies and abolishes an obsolete Forest Service system of records. the Forest Service is abolishing the following system of records which, upon review, is no longer used, and is, therefore, obsolete: USDA/FS–43, Emergency Fire Mobilization Plan Directory.

Dated: December 13, 2004.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 04–28241 Filed 12–27–04; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting Notice

AGENCY: U.S. Commission Civil Rights.

DATE AND TIME: Friday, January 7, 2005, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 9th Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda

II. Approval of Minutes of November 12, 2004 Meeting

III. Announcements

- Martin Luther King Day.
- Introduction of New Commissioners and Staff Director.

IV. Staff Director's Report

- Financial Status of the Commission.
- Status of GAO Recommendations.
- Compliance with Congressional Oversight.
- Other.

V. Administrative Policies and Procedures

- Policy Regarding Public Release of Commission Reports.
- Policy Regarding Posting of Reports on Commission Web Site.
- Immediate Changes to Commission Web Site.
- Policy of Scheduling Out of Town Commission Meetings.

VI. Staff Progress Reports

- Terri Dickerson, Office of Civil Rights Evaluation.
- Debra Carr, Office of General Counsel.
- George Harbison, Chief Budget and Finance Unit.
- Tina Martin, Director of Management.
- Pam Dunston, Administrative Services & Clearinghouse Division.

VII. Establishment of a Working Group on Reform

VIII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Kenneth L. Marcus, Staff Director (202) 376–7700.

Debra A. Carr,

General Counsel.

[FR Doc. 04–28484 Filed 12–23–04; 12:01 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Annual Report from Foreign-Trade Zones.

Agency Form Number: ITA–359P.

OMB Number: 0625–0109.

Type of Request: Regular Submission.

Estimated Burden: 14,330 hours.

Estimated Number of Respondents: 160.

Est. Avg. Hours Per Response: 38 to 211 hours (depending on the size and structure of the foreign-trade zone).

Needs and Uses: The Foreign-Trade Zone Annual Report is the vehicle by which Foreign Trade Zone (FTZ) grantees report annually to the Foreign Trade Zones Board, pursuant to the requirements of the Foreign Trade Zones Act (19 U.S.C. 81a–81u). The annual reports submitted by grantees are the only complete source of compiled information on FTZ's. The data and information contained in the reports relates to international trade activity in FTZ's. The reports are used by the Congress and the Department to determine the economic effect of the FTZ program. The reports are also used by the FTZ Board and other trade policy officials to determine whether zone activity is consistent with U.S. international trade policy, and whether it is in the public interest. The public uses the information regarding activities carried on in FTZ's to evaluate their effect on industry sectors. The information contained in annual reports also helps zone grantees in their marketing efforts.

Affected Public: State, local, or tribal governments or not-for-profit institutions which are FTZ grantees.

Frequency: Annual.

Respondent's Obligation: Required to maintain license, mandatory.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution, NW., Washington, DC 20230. E-mail: *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent via e-mail to *David_Rostker@omb.eop.gov* or fax (202)395–7285, within 30 days of publication of this **Federal Register** notice.

Dated: December 21, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–28282 Filed 12–27–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Economic Development Administration

[991215339–4345–13]

Solicitation of Proposals for Economic Development Assistance Programs

AGENCY: Economic Development Administration (EDA)

ACTION: Notice and request for proposals.

SUMMARY: The Economic Development Administration (EDA) is soliciting proposals for the following programs: Grants for Public Works and Economic Development Facilities; Economic Development—Support for Planning Organizations; Economic Development—Technical Assistance; Economic Adjustment Assistance; and Economic Development—Trade Adjustment Assistance. EDA's mission is to lead the Federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. EDA fulfills its mission by investing in the following: Public works, infrastructure and development facilities; the crafting and implementation of comprehensive economic development strategies; local, national and University Center-based technical assistance projects; and revolving loan funds. Under separate statutory authority, EDA also provides technical assistance to firms adversely affected by directly competitive imported products.

DATES: Proposals are accepted on a continuing basis and applications are invited and processed as received. Normally, two months are required for a final decision after the receipt of a completed application invited by EDA that meets all requirements.

ADDRESSES: For applicants in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina or Tennessee, please send proposals to: Economic Development Administration, Atlanta Regional Office, 401 West Peachtree Street, NW., Suite 1820, Atlanta, Georgia 30308–3510, *Telephone:* (404) 730–3002, *Fax:* (404) 730–3025.

For applicants in Arkansas, Louisiana, New Mexico, Oklahoma or Texas, please send proposals to: Economic Development Administration, Austin Regional Office, 327 Congress Avenue, Suite 200, Austin, Texas 78701–365, *Telephone:* (512) 381–8144, *Fax:* (512) 381–8177.

For applicants in Illinois, Indiana, Michigan, Minnesota, Ohio or Wisconsin, please send proposals to: Economic Development Administration, Chicago Regional Office, 111 North Canal Street, Suite 855, Chicago, IL 60606, *Telephone:* (313) 353–7706, *Fax:* (313) 353–8575.

For applicants in Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah or Wyoming, please send proposals to: Economic Development Administration, Denver Regional Office, 1244 Speer Boulevard, Room 670, Denver, Colorado 80204, *Telephone:* (303) 844–4715, *Fax:* (303) 844–3968.

For applicants in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, U.S. Virgin Islands or West Virginia, please send proposals to: Economic Development Administration, Philadelphia Regional Office, Curtis Center, 601 Walnut Street, Suite 140 South, Philadelphia, PA 19106, *Telephone:* (215) 597–4603, *Fax:* (215) 597–1063.

For applicants in Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Marshall Islands, Micronesia, Nevada, Northern Mariana Islands, Oregon or Washington, please send proposals to: Economic Development Administration, Seattle Regional Office, Jackson Federal Building, Room 1890, 915 Second Avenue, Seattle, Washington 98174,

Telephone: (206) 220–7660, *Fax:* (206) 220–7669.

For a copy of the FFO announcement for this request for proposals, please see the Web site below listed under ''Electronic Access.''

FOR FURTHER INFORMATION CONTACT: For additional information or for a paper copy of the FFO announcement, contact the appropriate EDA regional office listed above. EDA's Web site, *http://www.eda.gov* contains additional information on EDA and its program.

SUPPLEMENTARY INFORMATION:

Electronic Access: EDA is not currently able to accept electronic submission of proposal packages. However, the full funding opportunity announcement for the FY 2005 Economic Development Assistance Programs competition is available through Grants.gov at *http://www.grants.gov.* Additional information is available through EDA's Web site, *http://www.eda.gov.*

Funding Availability: Funding appropriated under Public Law 108–447 is available for economic development assistance programs authorized by the Public Works and Economic Development Act of 1965, as amended (Public Law 89–136, 42 U.S.C. 3121, *et seq.*), and as most recently amended by the Economic Development Administration Reauthorization Act of 2004 (Public Law 108–373), and for trade adjustment assistance authorized under title II, chapters 3 and 5 of the Trade Act of 1974, as amended (19 U.S.C. 2341–2355; 2391), and as further amended by Public Law 107–210. Funds in the amount of $253,984,652 have been appropriated for FY 2005 and shall remain available until expended.

Statutory Authority: The authority for programs listed below is the Public Works and Economic Development Act of 1965, as amended (Public Law 89–136, 42 U.S.C. 3121, *et seq.*), and as further amended by Public Law 105–393 and 108–373. The authority for the program listed in part II.6 is title II, chapters 3 and 5 of the Trade Act of 1974, as amended by Public Law 93–618, 98–120, 98–369, 99–272, 99–514, 100–418, 103–66, 105–277, and 107–210 (19 U.S.C. 2341–2391) (Trade Act).

CFDA: 11.300 Grants for Public Works and Economic Development Facilities; 11.302 Economic Development—Support for Planning Organizations; 11.303 Economic Development—Technical Assistance; 11.307 Economic Adjustment Assistance; 11.313 Economic Development—Trade Adjustment Assistance.

Eligibility: Eligible applicants for and eligible recipients of EDA financial assistance include Economic Development Districts: Indian tribes or consortia of Indian tribes; states; cities or other political subdivision; institutions of higher education or consortia of institutions of higher education; public or private nonprofit organizations or associations acting in cooperation with officials of a political subdivision of a state. Projects eligible for financial assistance include those projects meeting ''special needs'' criteria, as set forth in Section VIII.B. of the FFO.

Cost Sharing Requirements: Generally, the amount of the EDA grant may not exceed 50 percent of the cost of the project, unless the project meets the requirements in 42 U.S.C. 3144. Projects meeting the criteria may receive an additional amount that shall not exceed 30 percent based on the relative needs of the area in which the project will be located. *See* 42 U.S.C. 3144. While cash contributions are encouraged, in-kind contributions, fairly evaluated by EDA, may include assumptions of debt and contributions of space, equipment, and services and may provide the non-Federal share of the project cost. 42 U.S.C. 3144. In-kind contributions must be eligible project costs and meet applicable Federal cost principles and uniform administrative requirements. *Id.* EDA may supplement the costs of a project up to and including 100 percent of such project costs where the applicant is able to demonstrate that the project meets the requirements of 42 U.S.C. 3144(c). Potential applicants should contact the appropriate EDA office to make this determination.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Evaluation and Selection Procedures: Each pre-application proposal is circulated by a project officer to the appropriate regional office staff for review and comments. When the necessary input and information are obtained, the pre-application proposal is considered by the regional office Investment Review Committee (IRC), made up of regional office staff. The IRC discusses the proposal and all pertinent documentation and evaluates it on two levels of analysis. The IRC (a) determines if the proposal meets the program specific criteria provided under 13 CFR 305.2 for Public Works, 13 CFR 306.2 for Planning Assistance, 13 CFR 307.2 for Technical Assistance, 13 CFR 308.2 and 308.4 for Economic Adjustment and 13 CFR 315.5 and 315.6 for Trade Adjustment Assistance for Firms, and (b) rates each proposal using the general evaluation criteria set forth at 304.2 as further defined by the Investment Policy Guidelines set forth in this notice below. University Center and National Technical Assistance funding proposals will be evaluated pursuant to a separate **Federal Register** notice published in this issue.

After completing its evaluation, the IRC recommends whether or not an application should be invited, documenting its recommendation in the meeting minutes or in the Investment Proposal Summary and Evaluation Form. The IRC analysis of the project's fulfillment of the Investment Policy Guidelines is reviewed at EDA headquarters for quality assurance. After receiving quality control clearance, the Selecting Official (depending on the program, either the Regional Director or the Assistant Secretary) selects the applications to be invited after considering the evaluations provided by the IRC and the degree to which one or more of the Funding Priorities provided below are included (or packaged together) in making his/her decision as to which preapplication proposals should be invited. The Selecting Official then formally invites the successful proponent to submit a formal application. If the Selecting Official declines to invite a full application, he/she provides written notice to the proponent. In the case of a continuation grant, no pre-application proposal is required. Proposals received after the date of this notice will be processed in accordance with the requirements set forth herein until the next annual **Federal Register** is published.

If a successful proponent submits a formal application, it is reviewed by EDA program officials to determine whether it contains any deficiencies under EDA regulations at 13 CFR chapter III. If deficiencies are noted, the applicant is provided a written request to amend the application to resolve any deficiencies. EDA will negotiate with the applicant to resolve any deficiencies. If deficiencies are not resolved 30 days after receipt of the written notice, the application may be rejected. If the full application is accepted, the applicant and EDR are notified and it is forwarded for final reviews and processing in accordance with EDA and DOC procedures.

Evaluation Criteria: EDA investment proposals will be competitively evaluated primarily on their ability to meet or exceed the following Investment Policy Guidelines (each criterion will be given equal weight):

1. *Be market-based and results driven.* An investment will capitalize on a

region's competitive strengths and will positively move a regional economic indicator measured on EDA's Balanced Scorecard, such as: an increased number of higher-skill, higher-wage jobs; increased tax revenue; or increased private sector investment.

2. *Have strong organizational leadership.* An investment will have strong leadership, relevant project management experience, and a significant commitment of human resources talent to ensure a project's successful execution.

3. *Advance productivity, innovation, and entrepreneurship.* An investment will embrace the principles of entrepreneurship, enhance regional clusters, and leverage and link technology innovators and local universities to the private sector to create the conditions for greater productivity, innovation, and job creation.

4. *Look beyond the immediate economic horizon, anticipate economic changes, and diversify the local and regional economy.* An investment will be part of an overarching, long term comprehensive economic development strategy that enhances a region's success in achieving a rising standard of living by supporting existing industry clusters, developing emerging new clusters, or attracting new regional economic drivers.

5. *Demonstrate a high degree of commitment by exhibiting:*

- High levels of local government or non-profit matching funds and private sector leverage;
- Clear and unified leadership and support by local elected officials; and
- Strong cooperation between the business sector, relevant regional partners and local, state and federal governments.

Funding Priorities: Highly rated preapplication proposals may or may not be invited to submit full applications based on the following Funding Priorities. Generally, all EDA proposals and applications should enhance regional competitiveness and support long-term development of the regional economy. Further priority will be given to proposals that:

1. Encourage innovation and regional competitiveness:

a. Reflect coordination of strong regional leadership committed to regional cluster development;

b. Encourage a formal organization structure and process for working on cluster development and maintaining consensus;

c. Encourage a common vision and collaboration among firms, universities, and training centers to implement a cluster strategy;

d. Establish research and industrial parks that encourage innovation-based competition;

e. Implement cluster-focused and innovation-focused business development efforts; and

f. Develop or implement coordinated economic and workforce development strategies.

2. Upgrade core business infrastructure such as:

a. Transportation infrastructure;

b. Communications infrastructure; and

c. Specialized training program infrastructure.

3. Help communities plan and implement economic adjustment strategies in response to sudden and severe economic dislocation. Specifically, EDA will give highest priority to support manufacturing-impacted communities by:

a. Helping communities that experience manufacturing job losses (e.g., major layoffs, plant closures or trade impacts); and

b. Supporting innovation and competitiveness in American manufacturing.

4. Support technology-led economic development, for example, proposals that:

a. Reflect the important role of research and development capacity of universities in regional development; and

b. Create and support technology transfers.

5. Advance community and faith-based social entrepreneurship in redevelopment strategies for areas of chronic economic distress.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation, and are available on EDA's Web Site, *http://www.eda.gov.*

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Form ED–900P has been approved by OMB under the control number 0610–0094. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

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

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this rule concerning grants, benefits and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: December 21, 2004.

David A. Sampson,

Assistant Secretary for Economic Development.

[FR Doc. 04–28374 Filed 12–27–04; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF COMMERCE

Economic Development Administration

[991215339–4347–15]

Solicitation of Proposals for National Technical Assistance

AGENCY: Economic Development Administration (EDA), Department of Commerce (DOC).

ACTION: Notice and request for proposals.

SUMMARY: The Economic Development Administration (EDA) is soliciting proposals for the National Technical Assistance Program for Fiscal Year (FY) 2006. This notice also announces general policies and application procedures for grant-based technical assistance investments that aim to increase prosperity by advancing comprehensive, entrepreneurial, and innovation-based economic development efforts. The mission of EDA is to lead the Federal economic development agenda by promoting

innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. Through the National Technical Assistance (NTA) program, EDA will work towards fulfilling its mission by funding technical assistance projects to promote competitiveness and innovation in urban and rural regions throughout the United States and its territories. By working in conjunction with its research partners, EDA will help states, local governments, and community based organizations to achieve their highest economic potential.

DATES: Proposals for funding under this program must be received by the EDA representative listed in Section VII.B. of this competitive solicitation no later than May 31, 2005 at 4 p.m. (EDT). Proposals received after 4 p.m. (EDT) on May 31, 2005, will not be considered for funding. By June 15, 2005, EDA will notify proponents whether they will be given further funding consideration and will invite successful proponents to submit a formal application.

ADDRESSES: National Technical Assistance proposals may be e-mailed to *jmcnamee@eda.doc.gov*.

National Technical Assistance proposals may be hand-delivered to: Dr. John J. McNamee, U.S. Department of Commerce, Economic Development Administration, Room 1874, 1401 Constitution Avenue, NW., Washington, DC 20230; or

National Technical Assistance proposals may be mailed to: Dr. John J. McNamee, U.S. Department of Commerce, Economic Development Administration, Room 7816, 1401 Constitution Avenue, NW., Washington, DC 20230, Phone: 202–482–3566; Fax 202–501–4828.

FOR FURTHER INFORMATION CONTACT: For additional information or for a paper copy of the full Federal Funding Opportunity (FFO) announcement for this request for proposals, contact the appropriate EDA officer listed above. The text of the full FFO announcement is available through Grants.gov at *http://www.grants.gov*. EDA's Web site contains additional information on its program at *http://www.eda.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access: The full FFO announcement for the FY 2005 Economic Development Assistance Programs competition is available through Grants.gov at *http://www.grants.gov*.

Funding Availability: EDA may use funds appropriated under H.R. 4814 for the NTA Program. Funds in the amount of $1,122,000 are available for the NTA Program for FY 2005. These funds are available until expended.

Statutory Authority: The authority for programs listed below is the Public Works and Economic Development Act of 1965 (PWEDA), as amended (Pub. L. 89–136, 42 U.S.C. 3121, *et seq.*), and as most recently amended by the Economic Development Administration Reauthorization Act of 2004 (Public Law 108–373).

CFDA: 11.303 Economic Development—Technical Assistance.

Eligibility: Eligible applicants for and eligible recipients of EDA financial assistance include Economic Development Districts; Indian tribes or consortia of Indian tribes; states; cities or other political subdivisions; institutions of higher education or consortia of institutions of higher education; public or private nonprofit organizations or associations acting in cooperation with officials of a political subdivision of a state.

Cost Sharing Requirements: Generally, the amount of the EDA grant may not exceed 50 percent of the cost of the project, unless the project meets the requirements in 41 U.S.C. 3144. Projects meeting the criteria may receive an additional amount that shall not exceed 30 percent, based on the relative needs of the area in which the project will be located. *See* 42 U.S.C. 3144. While cash contributions are encouraged, in-kind contributions, fairly evaluated by EDA, may include assumptions of debt and contributions of space, equipment, and services and may provide the non-Federal share of the project cost. 42 U.S.C. 3144. In-kind contributions must be eligible project costs and meet applicable Federal cost principles and uniform administrative requirements. *Id.* EDA may supplement the costs of a project up to and including 100 percent of such project costs where the applicant is able to demonstrate that the project meets the requirements of 42 U.S.C. 3144(c). Potential applicants should contact the appropriate EDA office to make this determination.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Evaluation and Selection Procedures and Criteria

A. Evaluation and Selection Criteria/Procedures

To apply for an award under this request, an eligible applicant must submit a proposal to EDA during the specified timeframe and in the manner provided in Section VII of the FFO. Proposals that do not meet all items required as set forth in the FFO will be considered non-responsive. Non-responsive proposals will not be considered by the review panel. Proposals that meet all the requirements will be evaluated by a review panel comprised of at least three members, all of whom will be full-time Federal employees. The panel evaluates the proposals and rates and ranks them using the following criteria of approximate equal weight:

1. Relative severity of the economic problem of the area; 13 CFR 304.2(a)(1).
2. Quality and Degree of conformance of the scope of work; 13 CFR 304.2(a)(2).
3. Merits of the activities—13 CFR 304.2(a)(3) As further defined by the Investment Policy Guidelines provided below;
4. Ability to carry out the proposed activities successfully—13 CFR 304.2(a)(4).
5. Cost to the Federal Government.

B. Supplemental Evaluation Criteria: Investment Policy Guidelines

The mission of EDA is to lead the Federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy.

All potential EDA investments will be analyzed using the following five Investment Policy Guidelines, which constitute supplemental evaluation criteria of approximate equal weight and which further define the criteria provided at 13 CFR 304.2(a)(3).

1. *Be market-based and results driven.* An investment will capitalize on a region's competitive strengths and will positively move a regional economic indicator measured on EDA's Balanced Scorecard, such as: an increased number of higher-skill, higher-wage jobs; increased tax revenue; or increased private sector investment.

2. *Have strong organizational leadership.* An investment will have strong leadership, relevant project management experience, and a significant commitment of human resources talent to ensure a project's successful execution.

3. *Advance productivity, innovation, and entrepreneurship.* An investment will embrace the principles of entrepreneurship, enhance regional clusters, and leverage and link technology innovators and local universities to the private sector to create the conditions for greater productivity, innovation, and job creation.

4. *Look beyond the immediate economic horizon, anticipate economic changes, and diversify the local and regional economy.* An investment will be part of an overarching, long term comprehensive economic development strategy that enhances a region's success in achieving a rising standard of living by supporting existing industry clusters, developing emerging new clusters, or attracting new regional economic drivers.

5. *Demonstrate a high degree of commitment by exhibiting:*

- High levels of local government or non-profit matching funds and private sector leverage.
- Clear and unified leadership and support by local elected officials.
- Strong cooperation between the business sector, relevant regional partners and local, State and Federal governments.

Selection Factors: The Assistant Secretary of Commerce for Economic Development is the Selecting Official, and will in the normal course accept the ranking of the proposals recommended by the review panel. However, the Assistant Secretary may not make any selection, or he may substitute one of the lower rated proposals, if he determines that it better meets the overall objectives of PWEDA, as amended.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Form ED–900A has been approved by OMB under the control number 0610–0094. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

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

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for rules concerning grants, benefits and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 u.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: December 21, 2004.

David A. Sampson,

Assistant Secretary for Economic Development.

[FR Doc. 04–28376 Filed 12–27–04; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF COMMERCE

Economic Development Administration

[991215339–4346–14]

Solicitation of Proposals for the University Center (UC) Program

AGENCY: Economic Development Administration (EDA) Department of Commerce (DOC).

ACTION: Notice and request for proposals.

SUMMARY: EDA is soliciting proposals for FY 2005 University Center funding in the areas served by its Philadelphia and Chicago regional offices. EDA's mission is to lead the federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. Institutions of higher education have many assets, such as faculty, staff, libraries, laboratories, and computer systems, which can help to address local economic problems and opportunities. With funding from EDA, institutions of higher education establish and operate University Centers, which provide technical assistance to public and private sector organizations with the goal of enhancing local economic development. EDA has traditionally renewed an award to a University Center on an annual basis as long as it maintained a satisfactory level of performance and Congress appropriated funds for the program. In FY 2004, EDA began a phased implementation of a three-year competitive grant cycle for all of its University Center projects, beginning with those in the Austin and Denver regional offices. With the competition announced in this notice for University Center projects in the areas served by EDA's Philadelphia and Chicago regional offices, EDA is continuing to phase in competition for University Center funding.

DATES: Proposals must be received by the appropriate EDA regional office by April 22, 2005, at 4 p.m. (EDT).

ADDRESSES: From proponents in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, Virgin Islands, and West Virginia: Economic Development Administration, Philadelphia Regional Office, Curtis Center, 601 Walnut Street, Suite 140 South, Philadelphia, PA 19106.

From proponents in Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin: Economic Development Administration, Chicago Regional Office, 111 North Canal Street, Suite 844, Chicago, IL 60606.

For a copy of the FFO announcement for this request for proposals, please see the Web site below listed under ''Electronic Access.''

FOR FURTHER INFORMATION CONTACT: For additional information or for a paper copy of the FFO announcement, contact the appropriate EDA regional office listed above. EDA's Web site, *http://222.eda.gov* contains additional information on EDA and its program.

SUPPLEMENTARY INFORMATION:

Electronic Access: EDA is not currently able to accept electronic submission of proposal packages. However, the full funding opportunity announcement for the FY 2005 Economic Development Assistance Programs competition is available through Grants.gov at *http://www.grants.gov.* Additional information is available through EDA's Web site, *http://www.eda.gov.*

Funding Availability: Funding appropriated under Public Law 108–447 is available for technical assistance programs authorized by the Public Works and Economic Development Act of 1965, as amended (Public Law 89–136, 42 U.S.C. 3121, *et seq.*), and as further amended by Public Law 105–393 and 108–373, and for trade adjustment assistance authorized under title II, chapters 3 and 5 of the Trade Act of 1974, as amended (19 U.S.C. 2341–2355;

2391), and as further amended by Public Law 107–210. Funds in the amount of $8,322,335 have been appropriated for FY 2005 and shall remain available until expended.

EDA expects to allocate approximately $6.8 M to the University Center Program and the remaining funds to LEDA's Local and National Technical Assistance programs. The amount of University Center funding available for competition in FY 2005 is expected to be approximately $1,717,517 in the Philadelphia Regional Office and approximately $918,376 in the Chicago Regional Office. Anticipated annual awards for University Centers under the FY 2005 competition are in the $75,000 to $200,000 range. Regional Offices may, however, choose to fund proposals under this competition outside that range. The remaining FY 2005 program funds will be used to continue support for current University Centers. Subject to the availability of funding, the funds made available under this Program are anticipated to be available until expended.

Statutory Authority: The authority for programs listed below is the Public Works and Economic Development Act of 1965, as amended (Public Law 89–136, 42 U.S.C. 3121, *et seq.*) and as further amended by the Economic Development Administration Reauthorization Act (Public Law 108–373).

CFDA: 11.303, Economic Development—Technical Assistance.

Eligibility: For the University Center program, EDA considers all accredited institutions of higher education as eligible applicants.

For FY 2005 the University Center competition is open to eligible applicants in areas served by EDA's Philadelphia regional office and Chicago regional office. The Philadelphia regional office serves Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhodes Island, Vermont, Virginia, Virgin Islands, and West Virginia. The Chicago region serves Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Cost Sharing Requirements: Generally, the amount of the EDA grant may not exceed 50 percent of the cost of the project, unless the project meets the requirements in 42 U.S.C. 3144. Projects meeting the criteria may receive an additional amount that shall not exceed 30 percent, based on the relative needs of the area in which the project will be located. *See* 42 U.S.C. 3144. While cash contributions are encouraged, in-kind contributions, fairly evaluated by EDA, may include assumptions of debt and contributions of space, equipment, and services and may provide the non-Federal share of the project cost. 42 U.S.C. 3144. In-kind contributions must be eligible project costs and meet applicable Federal cost principles and uniform administrative requirements. *Id.* EDA may supplement the costs of a project up to and including 100 percent of such project costs where the applicant is able to demonstrate that the project meets the requirements of 42 U.S.C. 3144(c). Potential applicants should contact the appropriate EDA office to make this determination.

Funds from other Federal awards may not be considered matching funds. The nature of contribution (cash versus in-kind) and the amount of matching funds will be taken into consideration in the review process. Cash contributions are preferred.

Intergovernmental Review: Applications under this program are subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Evaluation and Section Procedures: EDA's Philadelphia and Chicago regional offices will conduct an initial administrative and technical review of each proposal package to determine its completeness and compliance with requirements.

EDA's Philadelphia and Chicago regional offices will then conduct an internal review of each proposal meeting the requirements of this solicitation. This review will be conducted by a minimum of three EDA staff using the criteria provided in the ''Evaluation Criteria'' section below. Successful proponents under this competition solicitation will be invited to submit a complete application by the Philadelphia or Chicago regional office.

Evaluation Criteria: EDA investments in proposed University Centers will be competitively rated and ranked on their ability to meet or exceed the criteria set forth at 13 CFR 304.2, as further defined by the following investment policy guidelines (each criterion will be given equivalent weight):

1. *Be market-based and results driven.* An investment in an EDA University Center will capitalize on the university's competitive strengths and will bolster regional economic competitiveness, resulting in tangible, quantifiable improvements in regional economic health—such as increased numbers of higher-skill, higher-wage jobs, increased tax revenue or increased private sector investment.

2. *Have strong organizational leadership.* An investment will have strong leadership, relevant project management experience, and a significant commitment of human resources talent to ensure a high-performing University Center. Specifically for University Center investments, this includes; (a) the extent to which the proposed University Center will maximize coordination with other relevant organizations and avoid duplication of services offered by other organizations, (b) the extent to which the University Center will access, take advantage of, and be supported by the other resources present at the sponsoring institution—especially the institution's economic development activities, (c) the degree of evidence demonstrating the support and commitment (both financial and non-financial) of the proposed University Center's mission from the leadership of the sponsoring institution.

3. *Advance productivity, innovation and entrepreneurship.* An investment in a proposed University Center will embrace the principles of entrepreneurship; enhance regional industry clusters, and leverage and link technology innovators (university research) with the private sector to create the conditions for greater productivity, innovation and higher-skill, higher-wage job creation.

4. *Look beyond the immediate economic horizon, anticipate economic changes, and diversify the local and regional economy.* A University Center's activities will be part of an overarching, long-term comprehensive economic development strategy that enhances a region's success in achieving a rising standard of living.

5. *Demonstrate a high degree of commitment by exhibiting:*

- High levels of local government or non-profit matching funds and private sector leverage.
- Clear and unified leadership and support by local elected officials.
- Strong cooperation between the business sector, relevant regional partners and local, state and federal governments.

In making its recommendations on which institutions should be invited to submit a full application, the EDA review team will strive to avoid the concentration of program funding in a single or very limited number of geographic areas. For that reason, EDA cannot predict a minimum ranking of a successful proposal.

Selection Factors: EDA expects to fund the highest ranking proposals submitted under this competition of solicitation. However, EDA may

selected proposals out of order for several reasons including: (1) Availability of funding; (2) geographic balance in distribution of funds; (3) program priorities and policy factors as set out in the full funding opportunity announcement; or (4) applicant's performance under previous awards.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

Teleconference

EDA's Philadelphia and Chicago regional offices will each hold a teleconference to answer questions about the FY 2005 competition for University Center funding.

Philadelphia: The Philadelphia regional office will hold its call on March 23, 2005, at 2 p.m. EST. In order to assure enough incoming lines are available, EDA requests colleges and universities planning to participate in the conference call to send an email to *WGood@eda.doc.gov* with ''Conference Call Registration'' in the subject line no later than 5 p.m. EST on March 18, 2005. The number for the conference call is 888–928–9122. The pass code for this conference call is ''PRO.''

Chicago: The Chicago regional office will hold its call on March 22, 2005, at 11 a.m. CST. In order to assure enough incoming lines are available, EDA requests colleges and universities planning to participate in the conference call to send an email to *RBUSH@eda.doc.gov* with ''Conference Call Registration'' in the subject line no later than 5 p.m. CST on March 18, 2005. The number for conference call is 888–570–6152. The pass code for this conference call is ''54776.''

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Form ED–900P has been approved by OMB under the control number 0610–0094. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

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

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for rules concerning grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: December 21, 2004.

David A. Sampson,

Assistant Secretary for Economic Development.

[FR Doc. 04–28375 Filed 12–27–04; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Prior Notification of Exports Under License Exception AGR

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 28, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6626, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, BIS ICB Liaison, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 906 of the TSRA requires that exports of agricultural commodities, medicine or medical devices to Cuba or to the government of a country that has been determined by the Secretary of State to have repeatedly provide support for acts of international terrorism, or to any other entity in such a country, are made pursuant to one-year licenses issued by the U.S. Government, while further providing that the requirements of one-year licenses shall be no more restrictive than license exceptions administered by the Department of Commerce, except that procedures shall be in place to deny licenses for exports to any entity within such country promoting international terrorism.

To meet the requirements of TSRA, BIS is imposing a prior notification procedure under new License Exception Agricultural Commodities (AGR). Exports and certain reexports of agricultural commodities will be authorized under License Exception AGR to Cuba.

II. Method of Collection

Submitted on forms.

III. Data

OMB Number: 0694–0123.

Form Number: BIS–748P.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 250.

Estimated Time Per Response: 52–57 minutes per response.

Estimated Total Annual Burden Hours: 926 hours.

Estimated Total Annual Cost: No start-up capital expenditures.

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 will also become a matter of public record.

Dated: December 21, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–28283 Filed 12–27–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

National Defense Authorization Act; Notice and Request for Comments

ACTION: Notice and Request for Comments.

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 28, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, BIS ICB Liaison, Department of Commerce, Room 6622, 14th & Constitution Avenue, NW., Washington, DC, 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is required as the result of the amending of the Export Administration Regulations (15 CFR parts 730–799) (EAR) by revising the (EAR) requirements for exports and reexports contained in Sections 1211–1215 of the National Defense Authorization Act (NDAA) for fiscal year 1998 (Public Law 105–85, 111 Stat. 1629), signed by the President on November 18, 1997. There is one component of this information collection authorization, a post-shipment report on the export of high performance computers,as well as exports of items used to enhance previously exported or reexported computers, to Tier 3 countries, where the CTP is greater than 85,000 MTOPS for commodities shipped on or after March 20, 2001. (For commodities shipped prior to that date, lower reporting thresholds apply, per 15 CFR Parts 740.7 and 742.12.) Exporters are required to provide a written report to BIS no later than the last day of the month following the month in which the export takes place. To simplify this process, BIS is developing an electronic form that will incorporate the relevant data elements and replace the written report, thereby standardizing the data format for the applicant, and enabling the use of information technology in the processing of the data.

II. Method of Collection

Submitted on forms.

III. Data

OMB Number: 0694–0107.

Form Number: BIS 742R, BIS 742S.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 5.

Estimated Time Per Response: 15 minutes per response.

Estimated Total Annual Burden Hours: 6 hours.

Estimated Total Annual Cost: No start-up capital expenditures.

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. In addition, the public is encouraged to provide suggestions on how to reduce and/or consolidate the current frequency of reporting.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: December 21, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–28284 Filed 12–27–04; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Computers and Related Equipment; Notice and Request for Comments

ACTION: Notice and request for comments.

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 28, 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.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Stephen Baker, BIS ICB Liaison, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

When BIS receives this information it is thoroughly reviewed by a licensing officer who, depending on the limits of parameters of the system, may submit the application for review by other government agencies. If the application is approved, the respondent is issued a validated export license that authorizes shipment of the computer system. If additional information is required, the respondent will be notified.

Applications may be rejected if it is determined that the export or reexport of the system poses a threat to U.S. national security.

II. Method of Collection

Submitted, as required, with form BIS–748P.

III. Data

OMB Number: 0694–0013.
Form Number: N/A.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 80.
Estimated Time Per Response: 32 minutes per response.
Estimated Total Annual Burden Hours: 86.
Estimated Total Annual Cost: No start-up capital expenditures.

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 will also become a matter of public record.

Dated: December 21, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–28285 Filed 12–27–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Separate-Rates Practice in Antidumping Proceedings Involving Non-Market Economy Countries

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Announcement of change in practice and request for comments.

SUMMARY: On May 3 and September 20, 2004, the Department of Commerce published notices in the **Federal Register** requesting comments on its separate rates practice (69 FR 24119 and 69 FR 56188). This practice refers to the Department's long-standing policy in antidumping proceedings of presuming that all firms within a non-market economy (''NME'') country are subject to government control and thus should all be assigned a single, country-wide rate unless a respondent can demonstrate an absence of both *de jure* and *de facto* control over its export activities. In that case, the Department assigns the respondent its own individually calculated rate or, in the case of a non-investigated or non-reviewed firm, a weighted-average of the rates of the investigated companies, excluding any rates that were zero, *de minimis*, or based entirely on facts available. In the Department's previous NME antidumping investigations, exporters seeking a separate rate have had to respond to section A of the NME questionnaire for purposes of providing the Department evidence of the exporters' independence of government control over their export activities.

Taking into account the comments it has received and without ruling out any additional changes in the future, the Department has provisionally decided to adopt an application process for evaluating separate rate requests by non-investigated firms, and to consider instituting combination rates (also known as ''chain'' or ''channel'' rates) for all firms receiving a separate rate in NME cases. Because several of the interested parties requested an opportunity to comment on the application before a final decision is made, the draft application has been posted on the Import Administration Web site at the following address: *http://ia.ita.doc.gov/*. This model application is based on a PRC investigation. We expect it would be modified on a case-by-case basis, depending on the NME under investigation. This notice will also describe how the application process will function in greater detail and serve as an opportunity to provide additional comments on both the shift from a section A response to an application process as well as on specific fields in the application itself. In particular, the Department welcomes comments on whether the fields in the application and the supporting documents it requires are sufficient for a firm to demonstrate its eligibility for a separate rate without being unnecessarily burdensome for the Department or for importers.

The second part of this notice, drawing on interested parties' comments, describes the Department's proposal to introduce combination rates in all of its NME antidumping cases in more detail, and clarifies how combination rates would work in practice. Because the Department recognizes that assigning combination rates in all of its NME cases would be a change in practice, and because parties have raised questions about the implementation and administration of this method of assigning antidumping margins, the Department is giving the public an additional opportunity to comment on this proposed change in practice. The Department is particularly interested in comments addressing how combination rates might work in practice, on whether there are obstacles to its effective implementation, and what the implications of combination rates might be for the Department or for respondents.

The Department is not ruling out additional changes to its separate rates practice, and will consider changes to its policy and practice in other areas. For this notice, however, the Department is most interested in comments on the application process and on its draft application, as well as on the proposal to institute combination rates for all NME exporters. The proposed application and application process are not yet finalized and are subject to modification. Furthermore, the Department has not made a final decision with respect to the draft application on the Import Administration Web site or on combination rates for all NME exporters. The Department's position with respect to both of these issues will be finalized after it has analyzed the comments it will receive in response to this notice.

DATES: Comments must be submitted by January 24, 2005.

ADDRESSES: Written comments (original and six copies) should be sent to James J. Jochum, Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, Pennsylvania Avenue and 14th Street NW., Washington, DC 20230. The Department recommends submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted either by e-mail to the webmaster below, or on CD–ROM.

FOR FURTHER INFORMATION CONTACT: Lawrence Norton, Economist, or Anthony Hill, Senior International

Economist, Office of Policy, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC, 20230, 202–482–1579 or 202–482–1843.

SUPPLEMENTARY INFORMATION:

Background

In an NME antidumping proceeding, the Department presumes that all companies within the country are subject to governmental control and should be assigned a single antidumping duty rate unless an exporter demonstrates the absence of both *de jure* and *de facto* governmental control over its export activities. See *Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996). If an exporter demonstrates this independence in its export activities, it is eligible for a rate that is separate from the NME-wide rate. This separate rate is usually an individually calculated rate or a weighted-average of the rates of the investigated companies, excluding any rates that were zero, *de minimis*, or based entirely on facts available. The Department's separate rates test is not concerned, in general, with macroeconomic border-type controls (*e.g.*, export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent the dumping of merchandise in the United States. Rather, the test focuses on controls over the decision-making process on export-related investment, pricing, and output decisions at the individual firm level. *See*, *e.g.*, *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Ukraine*, 62 FR 61754, 61757 (November 19, 1997); and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control in its export activities to be eligible to be assigned a separate rate, the Department analyzes each exporting entity under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as modified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22587 (May 2, 1994) (*Silicon Carbide*). Under this test, the Department assigns separate rates in NME cases only if an exporter can demonstrate the absence of both *de jure* and *de facto* governmental control over its export activities. See *Silicon Carbide* and *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). In order to request and qualify for a separate rate, a company must have exported the subject merchandise to the United States during the period of investigation or review, and it must provide information responsive to the following considerations:

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; and (3) any other formal measures by the government decentralizing control of companies.

2. Absence of *De Facto* Control: Typically, the Department considers four factors in evaluating whether each 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 central, provincial, or local governments in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

In an antidumping investigation or review, the Department currently assigns a weighted-average of the individually calculated rates, excluding any rates that were zero, *de minimis*, or based entirely on facts available, to exporters who have not been selected as mandatory respondents if they fulfill two requirements. First, they must submit a request for separate rates treatment, along with a timely response to section A of the Department's questionnaire. Second, the Department must determine, after reviewing the requesting companies' submissions, that separate rates treatment is warranted. *See*, *e.g.*, *Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China*, 67 FR 36570, 36571 (May 24, 2002).

As it announced in its September 20, 2004 and May 3, 2004, notices in the **Federal Register** (69 FR 56188, 69 FR 24119), the Department is considering changes to the practice detailed above in response to the growing administrative burden of analyzing requests for separate rates (especially inadequate submissions requesting separate rates treatment), and in response to concerns that the separate rates test could be made more effective in determining whether a company is eligible for a separate rate. The Department has faced a large number of separate rate requests in three recent investigations involving two NME countries. *See Notice of Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China*, 69 FR 67313 (November 17, 2004) (*PRC Furniture*); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China*, 69 FR 70997 (December 8, 2004) (*PRC Shrimp*); and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004) (*Vietnam Shrimp*).

While the Department analyzed the large number of separate rates requests in these three investigations, it has become clear that these requests consume an inordinate amount of the Department's resources. Various parties have also raised questions that the Department's separate rates test, as currently constructed, may not offer the most effective means of determining whether exporters act independently of the government. Some parties have argued that the current separate rates test does not go far enough in analyzing whether a firm acts both *de jure* and *de facto* independently of the government in its export activities, whereas others have argued that the test already goes beyond what is necessary and poses an unnecessary burden on respondents and on the Department.

Another issue that has been raised by parties concerns the potential evasion of duties. Under current practice, separate rates are assigned only to exporters, and this assigned rate applies to all of the firm's exports regardless of which entity produced the subject merchandise. Various interested parties argued that this practice is unfair, because while the margins the Department calculates are taken from a discrete set of suppliers, the cash deposit applies to any merchandise exported by the exporter in question, regardless of whether it was supplied by the same producers that

were investigated. The separate rate presumes that the exporters' activities are free from government control, but in allowing other ''non-investigated'' firms to benefit from this rate, these interested parties claim the Department undermines the effectiveness of its test. They argue further that the Department's current practice of accounting for changes in suppliers during administrative reviews is unsuited to industries with rapid shifts in sourcing and where suppliers can appear and disappear frequently. Finally, under the current practice, because the rates the Department assigns often vary widely from exporter to exporter (due partly to the NME- or country-wide rate), exporters assigned either the country-wide rate or a high calculated rate, can easily shift their shipments of subject merchandise to another exporter assigned a lower rate. Such diversion arguably undermines the effect of other antidumping duty margins the Department calculates.

As discussed above, the Department has provisionally decided to introduce an application process for evaluating separate-rate requests by companies that have not been selected as mandatory respondents. The appendix to this notice describes the rationale behind the separate-rate application, and the draft application itself is posted on the Import Administration Web site at the following address: *http://ia.ita.doc.gov/*. The appendix to this notice also describes the proposal to institute combination rates in all of its NME cases in more detail and offers the public another chance to comment on whether combination rates would be an effective remedy for the problems described above, and whether they would be consistent with the statute and regulations.

Comments

Persons wishing to comment should file a signed original and six copies of each set of comments by the date specified above. The Department will consider all comments received before the close of the comment period. Consideration of comments received after the end of the comment period cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in development of any changes to its practice. All comments responding to this notice will be a matter of public record and will be available for public inspection and copying at Import Administration's Central Records Unit, Room B–099, between the hours of 8:30 a.m. and 5 p.m. on business days. The Department requires that comments be submitted in written form. The Department recommends submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted either by e-mail to the webmaster below, or on CD–ROM as comments submitted on diskettes are likely to be damaged by postal radiation treatment. Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the Import Administration Web site at the following address: *http://ia.ita.doc.gov/*.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, e-mail address: *webmaster-support@ita.doc.gov.*

Dated: December 16, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix

(1) The Department has provisionally decided to change its separate rates procedure for non-investigated firms that request a separate rate from a process in which an exporter fills out a Section A questionnaire to an application process. Exporters that the Department selects as mandatory respondents will continue to respond to the entire questionnaire, including Section A, but Section A will be updated to conform with what is included in the application. The draft application can be found at the following address: *http://ia.ita.doc.gov/*. The draft application was designed to take into account concerns that the separate rates test could be improved to be a better measure of the export independence of firms, as well as concerns that the current test is too time-consuming and burdensome on the Department and on respondents. The application does not alter the standard laid out in *Sparklers* and *Silicon Carbide* for evaluating whether an applicant is subject to *de jure* or *de facto* government control. Rather, by drawing on the experiences of the recent NME investigations and interested parties' comments, the application process should be more straightforward and thorough while saving both the Department and applicants time and resources. In particular, by explicitly detailing which documents the Department will accept to substantiate a separate rates claim, the application should minimize the need for the extensive supplemental questionnaires that have proven to be burdensome and time-consuming. Since firms will have clear notice of what is required to document a separate rates claim, firms submitting incomplete applications will be rejected for separate rates status without supplementary questionnaires. Because adequate substantiation of a separate rates claim will be required and subject to verification, the application will be a meaningful test of a firm's eligibility for a separate rate.

The introduction of the application will be a dynamic process, where the Department would be ready to update the application as circumstances or experience warrants. In addition, the application would be tailored to some extent to each case. For example, the draft application's *de jure* section asks about various PRC government laws, which would obviously be changed in cases involving other NME countries. As discussed above, the application is intended to remedy problems that parties have identified with the current separate rates process. In the recent *PRC Furniture, PRC Shrimp* and *Vietnam Shrimp* cases, the Department often required several rounds of questionnaires to ascertain whether firms operated *de jure* and *de facto* independently of the government in their export activities. In these cases, several firms the Department had rejected for separate rates status at the preliminary determination returned, post-preliminary determination, with more evidence of their eligibility for a separate rate and then were granted a separate rate at the final determination. To the extent that such situations can be avoided in the future, both the Department and applicants will save time and resources, without undermining the Department's ability to enforce the antidumping law and without denying respondents the full opportunity to demonstrate their eligibility for a separate rate.

A primary goal of the separate rates application is to make it completely clear what documentation applicants must provide to demonstrate their eligibility for a separate rate, so as to avoid the need for the Department to issue supplemental questionnaires and avoid unnecessary rejections of applicants. Having drawn on the experiences of its recent investigations, as well as on comments from interested parties, the Department considers the application process to be both an effective analytical tool and one which does not place on applicants an unfair burden.

The application is streamlined to focus on those issues most relevant to separate rate eligibility; it requires firms to certify their eligibility for a separate rate, and it lists documents that respondents must submit in order to substantiate these certifications. Furthermore, the Department has incorporated questions not addressed currently in its standard NME Section A questionnaire that are pertinent to separate rates eligibility, and welcomes further suggestions in this area. While the Department reserves the right to issue supplemental questionnaires and verify applicants, such questionnaires and verifications function as further confirmation of firms' export independence, rather than as repetitions of what is expressly required by

the application. As noted above, because the application is clear about what is required, the Department will reject incomplete applications without issuing supplemental questionnaires.

To streamline the process further, the application will be available for printing on the Import Administration Web site, so that firms that have not received paper copies of the application will be aware of the application, its requirements, and deadline for submission. The Department may consider in the future requiring firms to submit the application electronically, but this is not the case at the current time, and firms will be expected to submit their separate rates application in the same way they currently file any documents with the Department. The Department has determined that this application represents an improvement over current practice and is fair to all parties. Nonetheless, the Department welcomes comments on the application and on particular fields therein by the deadline listed above.

(2) The Department is seriously considering adopting ''combination rates'' (alternatively referred to as ''chain'' or ''channel'' rates) in all of its NME cases, as first proposed in the previous requests for comments in (69 FR 24119) and (69 FR 56188). In response to these requests for comments, some parties have made powerful arguments that combination rates are necessary for a more effective enforcement of the dumping margins the Department calculates. In particular, parties have argued that since the Department margin calculations are based on the factors of production of the producer that supplied the exporter during the period of investigation or review, the rates the Department assigns should only apply to those producers. In addition, these parties argue, NME exporters assigned either a high margin or denied a separate rate are free to export their merchandise through exporters assigned a lower rate, leading to a ''funneling'' of all the subject merchandise through the exporters with the lowest rates.

Other parties, however, have questioned the usefulness of combination rates, and have raised concerns that combination rates would place a difficult burden on the Department, on U.S. Customs and Border Protection, and on respondents. These parties argue that it is counterproductive to propose making separate rates supplier-specific at a time when the Department is seeking to expedite the handling of the increasing number of separate rate requests it receives. These parties also argue that it would be a step back for the Department to limit the application of the separate rates it grants to subject merchandise produced by particular suppliers, particularly when in many industries it is common for exporters to source their merchandise from whichever producer is currently offering the lowest price. Finally, these parties argue that whatever change in the margin that may result from a shift in supplier will be accounted for in the next administrative review.

The Department understands the concerns of both sides on this issue and recognizes that issuing combination rates in NME investigations and administrative reviews would constitute a significant change in practice. Accordingly, the Department will make a final decision only after it has conducted a full analysis of the advantages and disadvantages of this change in practice, with an opportunity for public participation. For this reason, and to clarify exactly how the Department proposes to implement combination rates, the Department is offering another opportunity for comment on this proposed change in practice.

Under current NME practice, the Department assigns exporter-specific separate rates, and not exporter-producer combination rates, with three exceptions. The first exception concerns exclusions, in which case the exporter that is excluded receives an exporter-producer combination rate so that the exclusion from the antidumping order only applies when the exporter sources from the same supplier(s) as in the original investigation. *See* sections 733(b)(3) and 735(a)(4) of the Tariff Act of 1930, as amended, and 19 CFR 351.107(b)(1). The second exception involves the Department's enforcement of the law as it relates to middleman dumping. When a producer/exporter sells to an unaffiliated middleman with the knowledge of the ultimate destination of the merchandise, and that middleman subsequently sells merchandise to the United States at less than fair value, the Department will calculate a combination antidumping duty rate for the producer/exporter and middleman in many cases. The third exception concerns the Department's policy on new shipper reviews, where the rate is assigned to the exporter-producer combination. *See Import Administration Policy Bulletin 03.2: Combination Rates in New Shipper Reviews,* dated March 04, 2003.

The Department is considering extending this practice of assigning exporter-producer combination rates to NME exporters receiving a separate rate so that only the specific exporter-producer combination that was specifically investigated or reviewed on the record by the Department receives the calculated rate for establishing the cash deposit rate for estimated antidumping duties. This would not mean that the separate rates analysis would be extended back to producers, or that producers would in any way be required to demonstrate their independence of government control. The separate rates test focuses exclusively on the independence of respondent's export activities from *de jure* and *de facto* government control.

Under combination rates, firms qualifying for a separate rate, including both mandatory respondents and other exporters applying for a separate rate, would be required to list all the suppliers whose merchandise they exported to the United States during the period of investigation. The rate the Department would assign as a cash deposit to an NME exporter that had passed the separate rates test would only apply to merchandise produced by those suppliers that had supplied subject merchandise to the exporter for export to the United States during the period of investigation. The Department would then issue instructions to Customs that this calculated rate would only apply to subject merchandise that is exported by the firm that has received that separate rate, and has been produced by one of the producers the firm certified as having supplied it during the period of investigation. Merchandise produced by other suppliers but exported by the respondent would receive the NME-wide cash deposit rate until the administrative review, when factors on this new supplier can be collected and final dumping duties assessed. This would happen even if the producer(s) outside the combination had supplied a different respondent during the period of investigation.

The following is an example of how combination rates would work in practice. Exporter A seeks a separate rate during the investigation and supplies the Department with the necessary certification and documentation to obtain separate rates status. Further, Exporter A certifies that it sourced 20 percent of its subject merchandise for export to the United States during the period of investigation from Producer B, 30 percent from Producer C, and 50 percent from Producer D. It makes no difference if Exporter A is affiliated with its producers or not. Exporter A demonstrates its independence from the government in its export activities, and receives a separate rate for cash deposit in the preliminary determination based on the firm's sales to the United States, and on the weighted factors of production of its three suppliers.

After the preliminary and final determinations, this cash deposit rate would apply to all of the merchandise exported by Exporter A and supplied by Producers B, C, and D (if they supplied Exporter A during the period of review), in any proportion. That is, Exporter A would be free to source exclusively from Producer B, despite it having been a relatively minor supplier during the period of investigation. If Exporter A desired to introduce a new supplier, Producer E, it would have to make at least one sale of merchandise produced by Producer E to the United States at the NME-wide cash deposit rate. This is because the separate rate it was originally assigned was derived from the factors of production only from the three original suppliers and thus only applies to merchandise produced by the three original suppliers.

For the administrative review, Exporter A would have the option to request that it be reviewed. During the review, the Department would again collect factors information from Producers B, C, and D, as well as from the new supplier, Producer E. Thus, the new cash deposit rate going forward would be based on information from all four suppliers, and the combination would then be expanded to include Producer E. Furthermore, since the final dumping duties would be assessed during the administrative review, any difference between the NME-wide cash deposit rate Exporter A paid for its exports from Producer E and its final dumping margin would be refunded to Exporter A.

The Department welcomes comments on the legal and administrative advisability of introducing combination rates in all of its

NME cases. In addition, the Department welcomes comments on how combination rates might best be implemented.

[FR Doc. 04–28324 Filed 12–27–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–853

Notice of Final Results of Changed Circumstances Review and Revocation of the Antidumping Duty Order: Bulk Aspirin from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Changed Circumstances Review and Revocation of the Antidumping Duty Order.

SUMMARY: On June 24, 2004, the Department of Commerce published a notice of initiation and preliminary results of changed circumstances review and intent to revoke the antidumping duty order on bulk aspirin from the People's Republic of China (69 FR 35286). We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received, we intend to revoke this order effective July 1, 2003, the earliest date for which entries of bulk aspirin have not been subject to an administrative review.

EFFECTIVE DATE: December 28, 2004.

FOR FURTHER INFORMATION CONTACT: Scott Holland, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1279.

SUPPLEMENTARY INFORMATION:

Background

On July 11, 2000, the Department of Commerce (''the Department'') published an antidumping duty order on bulk aspirin from the People's Republic of China (''PRC''). *See Notice of Antidumping Duty Order: Bulk Aspirin from the People's Republic of China*, 65 FR 42673 (July 11, 2000). On April 30, 2004, Bimeda Inc. (''Bimeda''), a U.S. importer of bulk aspirin and an interested party in this proceeding, requested that the Department conduct a changed circumstances review for the purpose of revoking the antidumping duty order on bulk aspirin from the PRC. According to Bimeda, Rhodia, Inc. (''Rhodia''), the petitioner in the original investigation, and the only U.S. producer at the time the order was issued, closed its sole production facility related to the manufacture of bulk aspirin in the United States on or about December 20, 2002. Bimeda provided a press release, a news article, an excerpt from Rhodia's 2001 annual report to the Securities and Exchange Commission, and a product datasheet posted on Rhodia's corporate website to support its contention. (*See Notice of Initiation and Preliminary Results of Changed Circumstances Review and Intent to Revoke the Antidumping Duty Order: Bulk Aspirin from the People's Republic of China*, 69 FR 35286 (June 24, 2004) (''*Preliminary Results*'')).

In response to a request from the Department, on May 25, 2004, Rhodia stated that it had ceased production at its U.S. aspirin plant on February 28, 2003. Rhodia also indicated that it is still liquidating its inventory of bulk aspirin produced in the United States.

On June 17, 2004, Bimeda submitted additional information to support its request for a changed circumstances review. Bimeda asserted that it purchases only veterinary–grade bulk aspirin from Rhodia. According to Bimeda, Rhodia confirmed via a phone call to Bimeda's sales personnel that U.S.-produced subject merchandise was still being liquidated out of inventory, but not veterinary–grade aspirin. Bimeda further asserted that the changed circumstances review was still warranted and requested revocation of the order in full or alternatively, to exclude veterinary–grade bulk aspirin from the scope of the order.

Based on Bimeda's April 30, 2004, submission and Rhodia's May 25, 2004, submission, the Department initiated this changed circumstances review and issued preliminary results on June 24, 2004. Since the publication of the *Preliminary Results* of this review the following events have occurred:

We invited parties to comment on the *Preliminary Results*. On July 26, 2004, Perrigo Company (''Perrigo''), an importer of bulk aspirin from the PRC, Bimeda, Rhodia, and Shandong Xinhua Pharmaceutical Co., Ltd. (''Shandong''), a Chinese producer and exporter of bulk aspirin from the PRC and a respondent in the original investigation, submitted comments on the *Preliminary Results*. No rebuttal comments were submitted, nor was a public hearing held.

Scope of the Order

The product covered by this review is bulk acetylsalicylic acid, commonly referred to as bulk aspirin, whether or not in pharmaceutical or compound form, not put up in dosage form (tablet, capsule, powders or similar form for direct human consumption). Bulk aspirin may be imported in two forms, as pure ortho–acetylsalicylic acid or as mixed ortho–acetylsalicylic acid. Pure ortho–acetylsalicylic acid can be either in crystal form or granulated into a fine powder (pharmaceutical form). This product has the chemical formula C9H8O4. It is defined by the official monograph of the United States Pharmacopoeia 23 (''USP''). It is currently classifiable under the *Harmonized Tariff Schedule of the United States* (''HTSUS'') subheading 2918.22.1000.

Mixed ortho–acetylsalicylic acid consists of ortho–acetylsalicylic acid combined with other inactive substances such as starch, lactose, cellulose, or coloring materials and/or other active substances. The presence of other active substances must be in concentrations less than that specified for particular nonprescription drug combinations of aspirin and active substances as published in the *Handbook of Nonprescription Drugs*, eighth edition, American Pharmaceutical Association. This product is currently classifiable under HTSUS subheading 3003.90.0000.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Analysis of Comments Received

We have addressed the comments of the parties in the ''Issues and Decision Memorandum'' from Barbara E. Tillman, Acting Deputy Assistant Secretary, Import Administration to James J. Jochum, Assistant Secretary, Import Administration, dated December 9, 2004 (''*Decision Memorandum*''), which is on file in the Department's Central Records Unit (''CRU'') in room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Final Results of Changed Circumstances Review and Revocation of the Antidumping Duty Order

Pursuant to sections 751(b) and (d) and 782(h) of Tariff Act of 1930, as amended (''the Act''), as well as 19 C.F.R 351.222(g) of the Department's regulations, and consistent with the *Preliminary Results*, we determine that the continued relief provided by the order with respect to bulk aspirin from the PRC is no longer of interest to the

domestic interested party in this proceeding. See *Decision Memorandum* at Comment 1. The Department also determines that the effective date of revocation for this order is July 1, 2003, the earliest date for which entries of bulk aspirin have not been subject to an administrative review. See *Decision Memorandum* at Comment 2.

Instructions to U.S. Customs and Border Protection

In accordance with section 351.222 of the Department's regulations, the Department will instruct U.S. Customs and Border Protection (''CBP'') to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, all unliquidated entries of bulk aspirin from the PRC, entered, or withdrawn from warehouse, for consumption on or after July 1, 2003, the effective date of the revocation of the order. The Department will further instruct CBP to refund with interest any estimated duties collected with respect to unliquidated entries of bulk aspirin from the PRC entered, or withdrawn from warehouse, for consumption on or after July 1, 2003, in accordance with section 778 of the Act.

The Department will issue the appropriate instructions directly to CBP within 15 days of publication of these final results of review.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APO's'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this finding and 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: December 15, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–3829 Filed 12–27–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–423–808

Notice of Extension of Time Limit for Preliminary Results of Administrative Review: Stainless Steel Plate in Coils from Belgium

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

EFFECTIVE DATE: December 28, 2004.

FOR FURTHER INFORMATION CONTACT: Toni Page or Thomas Gilgunn at (202) 482–1398 and (202) 482–4236, respectively; AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Background

On June 30, 2004, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on stainless steel plate in coils from Belgium with respect to Ugine & ALZ, NV Belgium (U&A Belgium). *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 69 FR 39409 (June 30, 2004). The period of review (POR) is May 1, 2003, through April 30, 2004.

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall issue preliminary results in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it is not practicable to complete the review within the foregoing time period. Due to the complexity of issues related to determining the appropriate quantity and value of sales to be reported by U&A Belgium, the Department finds that it is not practicable to complete this review by the current deadline of January 31, 2005. Consequently, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department is extending the time limit for the completion of the preliminary results by 120 days, from January 31, 2005, until no later than May 31, 2005. The final results continue to be due 120 days after publication of the preliminary results. This notice is published pursuant to sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 20, 2004.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–3824 Filed 12–27–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

United States Travel and Tourism Promotion Advisory Board

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

Date: January 12, 2005.

Time: 9–10:30 a.m

Place: U.S. Department of Commerce, Room 5855, 1401 Constitution Avenue, NW., Washington, DC 20230.

Summary: The United States Travel and Tourism Promotion Advisory Board (''Board'') will hold a Board meeting on January 12, 2005 at the U.S. Department of Commerce.

The Board will discuss the implementation of an international advertising and promotional campaign, which seeks to encourage individuals to travel to the United States for the express purpose of engaging in tourism. The meeting will be open to the public. Time will be permitted for public comment. To sign up for public comment, please contact Julie Heizer at least 24 hours before the start of the meeting.

All non-U.S. Government visitors must be cleared into the Department of Commerce Building. Additionally, all foreign nationals must provide their full name, country of residence, passport number and date/place of birth to gain entry to the Department of Commerce Building. Please contact Julie Heizer so that you can be cleared by the Department of Commerce Office of Security.

Julie Heizer may be contacted at U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 7025, Washington, DC 20230; via fax at (202) 482–2887; or, via e-mail at *promotion@tinet.ita.doc.gov.*

Written comments concerning Board affairs are welcome anytime before or after the meeting. Written comments should be directed to Julie Heizer. Minutes will be available within 30 days of this meeting.

The Board is mandated by Public Law 108–7, Section 210. As directed by

Public Law 108–7, Section 210, the Secretary of Commerce shall design, develop and implement an international advertising and promotional campaign, which seeks to encourage individuals to travel to the United States. The Board shall recommend to the Secretary of Commerce the appropriate coordinated activities for funding. This campaign shall be a multi-media effort that seeks to leverage the Federal dollars with contributions of cash and in-kind products unique to the travel and tourism industry. The Board was chartered in August of 2003 and will expire on August 8, 2005.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OTTI.

Dated: December 21, 2004.

Cary G. Justice,

Senior Policy Advisor, Office of Services.

[FR Doc. 04–28258 Filed 12–27–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of Public Meeting of the National Conference on Weights and Measures

AGENCY: National Institute of Standards and Technology.

ACTION: Announcement of public meeting of the National Conference on Weights and Measures.

SUMMARY: Notice is hereby given that the Interim Meeting of the National Conference on Weights and Measures will be held January 23 through 26, 2004, at the Fairmont Miramar Hotel, Santa Monica, CA. This meeting is open to the public. Meeting registration and hotel information can be found on the NCWM Web site (*http://www.ncwm.net*). The National Conference on Weights and Measures is an organization of weights and measures enforcement officials of the States, counties, and cities of the United States, and private sector representatives. The interim meeting of the Conference brings together enforcement officials, other government officials, and representatives of business, industry, trade associations, and consumer organizations to discuss subjects related to the field of weights and measures technology and administration. Pursuant to (15 U.S.C. 272(b)(6)), the National Institute of Standards and Technology supports the National Conference on Weights and Measures in order to promote uniformity among the States in the complexity of laws, regulations, methods, and testing equipment that comprises regulatory control by the States of commercial weighing and measuring.

DATES: January 23–26, 2004.

ADDRESSES: The Fairmont Miramar Hotel, Santa Monica, CA.

SUPPLEMENTARY INFORMATION: The National Conference on Weights and Measures (NCWM) has the following topics scheduled for discussion and development at the Interim Meeting in January. This is a work session of the NCWM Committees to finalize recommendations for items that are considered sufficiently developed for a vote in July 2005 or to modify or withdraw from committee agendas those items that need additional development or are not considered adequately developed for vote in July. The NCWM will have a special joint session of the Laws and Regulations Committee and the Specifications and Tolerances Committee to receive input on the temperature compensation of refined petroleum products. The temperature compensation issues have been on the agenda for several years, but there hasn't been a clear majority position to resolve the specific items before the NCWM. Please see NCWM Publication 15, which is available on the NIST Web site (*http://www.nist.gov/owm*) and the NCWM Web site (*http://www.ncwm.net*) for additional information. Written comments may be submitted to the Chief, NIST Weights and Measures Division, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600, or via e-mail at *owm@nist.gov*.

The following provides a brief description of the agenda items. At this stage, the items are proposals. The Committees will decide which items will move forward as recommendations for vote in July 2005, which ones will be withdrawn, and which ones will be information items for further development. The NCWM Specifications and Tolerances Committee addresses proposed changes or amendments to NIST Handbook 44, ''Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices.'' The items address commercial weighing and measuring devices that may be used in commercial measurement applications, that is, devices that are normally used to buy from or sell to the general public or used for determining the quantity of product sold among businesses. Issues on the agenda of the NCWM Laws and Regulations Committee relate to NIST Handbook 130, ''Uniform Laws and Regulations in the area of legal metrology and engine fuel quality,'' and NIST Handbook 133, ''Checking the Net Contents of Packaged Goods.''

NCWM Specifications and Tolerances Committee

General Code

Item 310–1: The issue addresses an extensive series of marking requirements for commercial measurement systems. In particular, the topic examines which marking requirements should apply to electronic instruments that are not specifically designed for weighing or measuring systems, but which increasingly are being used in commercial weighing and measuring systems.

Item 310–2: Clarify the tolerances to be applied during the type evaluation of weighing and measuring instruments, that is, whether or not special test tolerances should apply to instruments undergoing type evaluation.

Scales Code

Item 320–1: Clarify the requirement's original intent for marking zero indications on scales and point-of-sale systems, where a zero-balance condition is represented by other than a digital zero indication.

Item 320–2: The proposal is to drop the ''#'' mark as a symbol for ''pound'' on a receipt printed by a point-of-sale system, *i.e.*, a cash register interfaced with a scale.

Item 320–3: Add new device-specific requirements to the Scales Code to address the proper interface of computing scales with electronic cash registers (ECR).

Item 320–4: Change the zero-tracking requirement (the amount of weight that can automatically be rezeroed) for class III scales to be consistent with the international standard recommended by the International Organization of Legal Metrology (OIML).

Item 320–5: Provide guidelines on the placement of the required nominal capacity and scale division information on scales.

Item 320–6: Delete the definitions for bench and counter scales, because current scale designs no longer distinguish between these two types of scales. Additionally, the proposal is to change the test load and test positions for the shift test for scales, particularly for small capacity scales.

Item 320–7: The proposal is to drop the fourth tolerance step for Class III and Class IIII scales to align the tolerances with the OIML standard. This is a significant issue because there are

many scales to which these tolerances apply.

Item 320–8: Align the U.S. requirements for the time dependence (creep) test for scales and load cells with the OIML requirements.

Item 320–9: Include in NIST Handbook 44 the list of accepted international symbols for marking operational controls, indications and features on scales.

Belt-Conveyor Scale Systems

Item 321–1: Add a requirement for users of belt-conveyor scales to prevent the reweighing of material that has already been weighed, but which may have fallen off the belt-conveyor before delivery to the customer. Additionally, another user requirement would be changed to require that records be maintained for 3 years regarding the calibration and adjustment of belt-conveyor scales.

Automatic Bulk Weighing Systems

Item 322–1: The proposal is to specify the tolerance for automatic bulk weighing systems in terms of scale divisions rather than as a percentage of the test load. The concern is that, based upon the amount of test weights that are normally available to test these weighing systems, this may result an tolerance that is effectively larger than what is currently being applied to these scales.

Liquid-Measuring Devices

Item 330–1: This item is to address ''computer jump'' on gasoline and diesel fuel dispensers as the price of gasoline and diesel fuel continues to increase.

Item 330–2: Change the value of the rated flow rate for retail motor fuel (gasoline and diesel fuel) dispensers at which special tests are to be conducted at low flow rates to be consistent with other requirements in the code. The proposal also clarifies that dispensers are not to operate at flow rates below the rated minimum flow rate stated by the meter manufacturer.

Vehicle-Tank Meters

Item 331–1: Add a number of specifications, test notes, and tolerances to recognize automatic temperature compensation on vehicle-tank meters and specify the tests to be conducted on meters equipped with automatic temperature compensation. This subject is the focus of a special joint session of the Laws and Regulations Committee and the Specifications and Tolerances Committee to receive input on the temperature compensation of refined petroleum products

Item 331–2: Clarify that the unit price on a vehicle-tank meter does not have to be displayed continuously on a price-computing meter register. However, the unit price must be clearly displayed and understood by the operator and an observer of the delivery.

Item 331–3: The proposal is to require an automatic zero-set-back interlock on vehicle-tank meters to force meters to be set back to zero for each delivery. Complications that must be considered are multiple deliveries in one location to a single customer and deliveries for aircraft refueling.

Item 331–4: Modify the ''split-compartment'' test for vehicle-tank meters and rename the test as a ''product depletion'' test. A specific tolerance is specified for the performance of the vapor (air) eliminator system.

Other Items

Item 360–1: Add a tentative code for livestock, meat, and poultry evaluation systems used to measure the fat content on carcasses and other quality characteristics that affect the price paid for the commodities. The proposed tentative code is based upon four recently completed ASTM standards that have been developed over the past three years.

Item 360–2: Amend the Fundamental Considerations in Handbook 44 to recognize additional standards that are acceptable for field standards and update the terminology and references for field standards, reference and secondary standards, corrections, and uncertainties. These changes are related to items 221–1 and 234–1 on the agenda of the Laws and Regulations Committee.

Item 360–3: Contact information is provided for current OIML activities regarding the development of international legal metrology standards.

Item 360–4: The proposal is to add the OIML terminology to Handbook 44 for features and operational controls on commercial weighing and measuring devices.

Item 360–5: Two issues are identified for continued development. The first is General Code paragraph G-S.5.6.1. Recorded Representation of Metric Units on Equipment with Limited Character Sets. The second is Scales Code Table 4. Minimum Test Weights and Test Loads; Device Capacity 500,000 lb.

NCWM Laws and Regulations Committee

Item 221–1: Amend the Uniform Weights and Measures Law to modify definitions for different types of physical standards to be consistent with current international terminology, add definitions regarding traceability, accreditation, calibration, uncertainty, and other technical terms to recognize current roles of accredited laboratories. Additionally, amendments to the Uniform Weights and Measures Law are proposed to allow the recognition of calibrations performed by accredited laboratories and to broaden references to documentary standards to allow the recognition and use of documentary standards developed by other national and international standards developing organizations.

Item 232–1: Amend the Uniform Method of Sale Regulation to address the temperature compensation of refined petroleum products to the volume at 15 °C (60 °F) for deliveries from wholesale through retail (service station) transactions. This subject is the focus of a special joint session of the Laws and Regulations Committee and the Specifications and Tolerances Committee to receive input on the temperature compensation of refined petroleum products.

Item 234–1: Amend the Uniform Regulation for the Voluntary Registration of Servicepersons and Service Agencies regarding the references to the physical standards that are used and to expand the reference to national and international documentary standards that may be acceptable for the physical standards used by these service agencies. The proposed changes would also broaden the range of laboratories that could verify compliance of the physical standards to these documentary standards.

Item 237–1: This item examines the identification and labeling of biodiesel fuels and blends at the service station for sale to the general public.

Item 237–2: This item is to modify the lubricity requirement for premium diesel fuel to be current with the evolving ASTM standard for this product.

Item 260–1: The item is to reexamine proposed changes to the maximum allowable variations for meat and poultry products subject to USDA regulations.

Item 260–2: This proposal seeks to have the maximum allowable variations apply to packages of wood shavings.

Item 260–3: This item proposes that a work group be established to examine all of the maximum allowable variations stated in NIST Handbook 133 to see if they should be modified based upon current packaging methods and international standards for these products.

Item 270–1: Since more meat and poultry products are being packaged in

centralized locations and then distributed to stores for sale, the proposal explores if tare weights should be required to be printed on the individual ''case-ready'' packages.

FOR FURTHER INFORMATION CONTACT: Henry V. Oppermann, Chief, NIST, Weights and Measures Division, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600. Telephone (301) 975–4004, or email: *owm@nist.gov.*

Dated: December 17, 2004.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 04–28350 Filed 12–27–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120304A]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Application for enhancement of survival permit.

SUMMARY: Notice is hereby given that NMFS has received an application for an enhancement of survival permit from the Lower Columbia Fisheries Enhancement Group (LCFEG). The proposed action is intended to enhance and restore salmonid habitat in southwest Washington.

DATES: Comments or requests for a public hearing on the application request must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific daylight-saving time on January 27, 2005.

ADDRESSES: Written comments on the application should be sent to Habitat Conservation Division, NMFS, 510 Desmond Drive SE, Suite 103, Lacy, WA 98503. Comments may also be sent via fax to 360–753–9517 or by e-mail to *stephanie.ehinger@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Stephanie Ehinger, Lacey, WA (phone: 360–534–9341, fax: 360–753–9517, e-mail: *stephanie.ehinger@noaa.gov*); or Dan Guy at the same office (phone: 360–534–9342, email: *dan.guy@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Species Covered in this Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): Threatened Lower Columbia River (LCR).

Steelhead (*O. mykiss*): Threatened LCR.

Coho (*O. kisutch*): Proposed threatened LCR.

Authority

Scientific research and enhancement of survival permits are issued in accordance with section 10(a)(1)(A) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) (ESA) and regulations governing listed fish and wildlife permits (50 CFS 222–226). NMFS issues permits based on findings that such permits/modifications: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on the application listed in this notice should set out the specific reason why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA.

Application Received

The LCFEG is requesting a 5–year permit to annually take juvenile threatened LCR chinook salmon, threatened LCR steelhead, and proposed threatened LCR coho. They propose to undertake projects that will enhance and restore salmon habitat in southwest Washington. The primary tributaries they propose to work in are the Washougal, Lewis, Kalama, Cowlitz, Toutle, Elochman, Grays, and Chinook River watersheds. The LCFEG is one of 14 Regional Fisheries Enhancement Group's (RFEG's) created by the Washington State legislature in 1990. Each RFEG is an independent 501(c)(3) non-profit organization with the mission to increase salmonid populations.

The proposed projects were developed using the Lead Entity's Interim Strategy for Habitat Restoration (*http://www.lcfrb.gen.wa.us.gtml*) and the Limiting Factors Analysis completed by the Washington State Conservation Commission (*http://salmon.scc.wa.gov/reports/index.html*).

The projects would be carefully monitored, and the LCFEG would provide annual reports to NMFS so that the actions can be evaluated and, if needed, modified. The LCFEG will also monitor take and provide NMFS with annual reports stating the take types and amounts.

The proposed activities will be carried out solely for the benefit of listed salmon; that is, for the enhancement of survival of listed salmonids. The LCFEG will take specific measures such as designing, scheduling, and sequencing construction work to minimize any adverse impacts. Complete details of conservation measures are provided in the permit application.

This notice is provided pursuant to section 10 (c) of the ESA. NMFS will evaluate the application, associated documents and comments submitted to determine whether the application meets the requirements of section 10 (a) of the ESA and Federal regulations. The final permitdecision will not be made until after the end of the 30–day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: December 21, 2004.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–28369 Filed 12–27–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122104D]

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Trawl Survey Advisory Panel, composed of representatives from the Northeast Fisheries Science Center (NEFSC), the Mid-Atlantic Fishery Management Council (MAFMC), the New England Fishery Management Council (NEFMC), and several independent scientific researchers, will hold a public meeting.

DATES: The meeting will be held on January 26, 2005, from noon to 5 p.m. and January 27, 2005, from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Brookshire Suites (Inner Harbor), 711 Eastern Ave., Baltimore, MD; telephone: (410) 625-1300.

Council address: Mid-Atlantic Fishery Management Council; 300 S. New Street, Room 2115, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; 300 S. New Street, Room 2115, Dover, DE 19904; telephone: (302) 674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to review the results of the October Northeast Fisheries Science Center's experimental trawl survey cruise.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Debbie Donnangelo at the Mid-Atlantic Council Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: December 22, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–3837 Filed 12–27–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122104E]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Oversight Committee in January, 2005 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on January 13, 2005, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (978) 339–2200.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Groundfish Committee will meet to consider changes to the management measures, if necessary, in order to meet the objectives of Amendment 13. In addition to changes that may be needed to respond to the updated assessments, the Committee may consider changes to other management measures. These could include, but are not limited to, an extension of the days-at-sea leasing program, modifications to the default measures, modifications to existing Special Access Programs (SAPs) or additional SAPs, changes to permitting conditions, reviews of bycatch information, etc.

As a result of the extensive scope of this next management action, the Groundfish Committee will also meet to develop recommendations on the broad issues to be addressed in the next adjustment, identify the information that will be needed to support decisions on those issues, develop a timeline for the Committee's work, and may begin to identify specific measures that will be included. The Committee's recommendations will be presented to the full Council for consideration at a later date.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: December 22, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–3838 Filed 12–27–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121404C]

Endangered Species; File No. 1508

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

ACTION: Receipt of application for permit.

SUMMARY: Notice is hereby given that Duke Power Company (Mr. Gene Vaughan, Principal Investigator), 13339 Hagers Ferry Rd., Huntersville, NC 28078, has applied in due form for a permit for scientific research on shortnose sturgeon (*Acipenser brevirostrum*).

DATES: Written or telefaxed comments must be received on or before January 27, 2005.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and,

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on the particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include

in the subject line of the e-mail comment the following document identifier: File No. 1508.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

As part of the Federal Energy Regulatory Commission's 2008 relicensing of Duke Power's Catawba-Wateree Hydropower Project, various environmental studies will be conducted in the years prior to comply with the Electric Consumer's Protection Act of 1986. One particular study would determine the use of the Wateree River and a section of the Congaree River near Columbia, SC as spawning grounds by certain diadromous fish species including shortnose sturgeon. Duke Power Company seeks authorization to sample shortnose sturgeon in the Wateree and Congaree Rivers in South Carolina. Annually, up to 10 fish would be captured via gill nets, trap nets, and electrofishing; measured; weighed; scanned for PIT tags; and subsequently released. This research would be conducted for five years from issuance of the permit.

Dated: December 21, 2004.

Jennifer Skidmore,

Acting, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–28367 Filed 12–27–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121704D]

Marine Mammals; File No. 984–1587

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

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Dr. Terrie Williams, Long Marine Lab, Institute of Marine Sciences, University of California at Santa Cruz, 100 Shaffer Road, Santa Cruz, CA 95060, has requested an amendment to scientific research Permit No. 984–1587–03.

DATES: Written or telefaxed comments must be received on or before January 27, 2005.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 984–1587–04.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 984–1587–03, issued on July 1, 2003 (68 FR 40912), is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 984–1587–03 authorizes the permit holder to examine the physiological responses of two adult male dolphins (*Tursiops truncatus*) and five adult female California sea lions (*Zalophus californianus*) during swimming and diving. Testing involves measuring locomotor, thermal, and maintenance costs using voluntary behaviors through training at Long Marine Laboratory. Types of take for dolphins and sea lions include open flow respirometry, swimming, and voluntary breath holding. For the female sea lions, mating with an adult male on temporary loan, ultrasound, blood, milk, saliva, fecal, and urine sampling is also authorized to monitor pregnancy and test the hypothesis that physiological adaptations for the marine environment result in elevated energetic costs in otariids compared to terrestrial mammals.

This amendment request is to supplement the current research program on otariid reproductive energetics with two juvenile California sea lions born at the pinniped facility at Long Marine Laboratory, University of California at Santa Cruz. These additions will allow the Permit Holder to evaluate the effects of nutrition on growth in immature sea lions. In addition, these animals have been determined unfit for release. All animals will follow the research protocols of the original permit.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 21, 2004.

Jennifer Skidmore,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–28368 Filed 12–27–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Public User ID Badging

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 28, 2005.

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

• *E-mail: Susan.Brown@uspto.gov.* Include ''0651–0041 comment'' in the subject line of the message.

• *Mail:* Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Requests for additional information regarding online access cards or user training should be directed to Terry Howard, Acting Manager, Public Search Facilities, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at (571) 272–3258; or by electronic mail at *Terry.Howard@uspto.gov.*

Requests for additional information regarding security identification badges should be directed to J.R. Garland, Director, Security Office, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at (703) 306–9000; or by electronic mail at *Calib.Garland@uspto.gov.*

SUPPLEMENTARY INFORMATION

I. Abstract

The United States Patent and Trademark Office (USPTO) is required by 35 U.S.C. 41(i)(1) to maintain a Public Search Facility to provide patent and trademark collections for the public to search and retrieve information. The Public Search Facilities are maintained for public use with paper and automated search files and trained staff to assist searchers.

The public user identification cards included in this collection are being modified to allow for a separate security identification badge with photograph that will be issued by the USPTO Office of Security. Users of the public search facilities will continue to need a user identification card, now referred to as an online access card, in order to access the search systems in the Public Search Facilities. In addition to the security badges and online access cards, the USPTO is adding forms to this collection for public users who wish to register for training classes in using the electronic search systems.

Under the authority provided in 41 CFR Part 102–81, the USPTO is upgrading the security procedures at its facilities. The USPTO issues public user identification badges to those in the public who wish to use the Public Search Facilities and other office areas of the USPTO under the current collection 0651–0041. The USPTO is currently in the process of moving to a new location in Alexandria, Virginia. At the new facility, the public will continue to receive user identification badges for Public Search Room use.

The application procedures for identification badges are being updated. Users will now apply for a badge in person at the USPTO Office of Security by providing the necessary information and presenting a valid form of identification with photograph. As before, badges will include a color photograph of the user and must be worn at all times while at the USPTO facilities.

In order to maintain and control the patent and trademark collections so that the information is available to the public, the USPTO will issue online access cards to customers who wish to use the Public Search Facilities. Online access cards are required for access to all Public Search Facilities and their online systems. Customers may apply for an online access card by completing the application at the Public Search Room reception desk and providing proper identification. User information is stored in an electronic database and can be updated as necessary. Replacements for lost cards can also be reissued upon verification of the identity of the requestor. The plastic online access cards include a bar-coded user number and an expiration date. Users may renew their cards by validating and updating the required information.

The online access card system is designed to enable the USPTO to control access to the resources at the Patent Search Facilities and to track statistics for patent and trademark search services. The online access cards also allow the USPTO to identify and contact anyone misusing the search facilities. The USPTO counsels and sanctions users who mishandle its equipment or destroy, misfile, or remove documents from its collections.

The USPTO offers public searchers training courses on the advanced online search systems available at the USPTO Public Search Facilities. Customers may register for a training course by submitting the enrollment form by mail, fax, or in person at the Public Search Facilities and paying the appropriate fee.

II. Method of Collection

The applications for online access cards and security identification badges are completed on site and handed to a USPTO staff member for issuance. User training application forms may be mailed, faxed, or hand delivered to the USPTO.

III. Data

OMB Number: 0651–0041.

Form Number(s): PTO–2030, PTO–2224.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profits; not-for-profit institutions; farms; the Federal Government; and state, local or tribal governments.

Estimated Number of Respondents: 13,138 responses per year.

Estimated Time Per Response: The USPTO estimates that it will take the public approximately 5 minutes (0.08 hours) to gather the necessary information, prepare the form, and submit the completed application for an online access card (PTO–2030), and approximately 10 minutes (0.17 hours) to verify the information with the USPTO staff and be issued the card. Renewal or replacement of an online access card is estimated to take approximately 5 minutes (0.08 hours).

The USPTO also estimates that it will take the public approximately 5 minutes (0.08 hours) to prepare and submit the application for a security identification badge (PTO–2224) or to obtain a replacement security identification badge, and 10 minutes (0.17 hours) to prepare and submit a user training application form.

Estimated Total Annual Respondent Burden Hours: 1,260 hours per year.

Estimated Total Annual Respondent Cost Burden: $187,740 per year. The USPTO estimates that of those users requesting online access cards, security identification badges, and training courses, approximately ⅓ of the users are attorneys and ⅔ are paraprofessionals. Using ⅓ of the professional rate of $286 per hour for associate attorneys in private firms and ⅔ of the paraprofessional rate of $81 per hour, the estimated rate for respondents to this collection will be approximately $149 per hour.

Item	Estimated time for response (minutes)	Estimated annual responses	Estimated annual burden hours
Application for Public User ID (Online Access Card) (PTO–2030)	5	4,817	385
Issue Online Access Card	10	2,259	384
Renew Online Access Card	5	2,558	205
Replace Online Access Card	5	140	11
User Training Application Forms	10	64	11
Security Identification Badges for Public Users (PTO–2224)	5	3,000	240
Replace Security Identification Badge	5	300	24
Total	.....	13,138	1,260

Estimated Total Annual Non-hour Respondent Cost Burden: $8,397. There are no capital start-up, maintenance, or recordkeeping costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of filing fees and postage costs.

There are no application or renewal fees for online access cards or security identification badges. However, there is a $15 fee for issuing a replacement online access card or a replacement security identification badge. The USPTO estimates that it will reissue approximately 140 online access cards and 300 security badges annually that have been lost or need to be replaced, for a total of $6,600 per year in replacement fees.

There are registration fees for the user training courses offered at the Public Search Facilities. The regular cost for a public course is $25 per class, and individual instruction may also be arranged for $120 per class. The USPTO estimates that it will receive 62 registrations for public courses and 2 registrations for individual instruction per year, for a total of $1,790 in training registration fees. Therefore, this collection has a total of $8,390 in filing fees in the form of online access card replacement fees, security identification badge replacement fees, and training registration fees.

Item	Estimated annual responses	Fee amount ($)	Estimated annual fee costs ($)
Application for Public User ID (Online Access Card) (PTO–2030)	4,817	0.00	0.00
Issue Online Access Card	2,259	0.00	0.00
Renew Online Access Card	2,558	0.00	0.00
Replace Online Access Card	140	15.00	2,100.00
User Training Application Forms (Public Course)	62	25.00	1,550.00
User Training Application Forms (Individual Course)	2	120.00	240.00
Security Identification Badges for Public Users (PTO–2224)	3,000	0.00	0.00
Replace Security Identification Badge	300	15.00	4,500.00
Total	13,138	.....	8,390.00

Users may incur postage costs when submitting a user training application form to the USPTO by mail. The USPTO expects that approximately 20 of the estimated 64 training forms received per year will be submitted by mail. The USPTO estimates that the average first-class postage cost for a mailed training form will be 37 cents, for a total postage cost of approximately $7 per year for this collection.

The total non-hour respondent cost burden for this collection in the form of filing fees and postage costs is estimated to be $8,397 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: December 20, 2004.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 04–28247 Filed 12–27–04; 8:45 am]

BILLING CODE 3510–16–P

COMMODITY FUTURES TRADING COMMISSION

Global Market Advisory Committee meeting

This is to give notice, pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, 10(a), that the Commodity Futures Trading Commission's Global Markets Advisory Committee will conduct a public meeting on Wednesday, January 12, 2005. The meeting will take place in the first floor hearing room of the Commission's Washington, DC headquarters, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581 from 1 to 4 p.m.

The agenda will consist of the following:

(1) Call to order.

(2) Briefing on China currency issues.

(3) Report of subcommittee on bankruptcy issues.

(4) Commodity Exchange Act reauthorization: global markets issues and legislative update.

(5) Other business.

(6) Adjourn.

The meeting is open to the public. The Chairman of the Global Markets Advisory Committee is Commissioner Walter L. Lukken. any member of the public who wishes to file a written statement with the committee should mail a copy of the statement to the attention of: Global Markets Advisory Committee, c/o Commissioner Walter L. Lukken, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should inform Commissioner Lukken in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for oral presentations of no more than five minutes each in duration.

For further information concerning this meeting, please contact David Stanwick, a member of Commissioner Lukken's staff, at 202–418–5014.

Issued by the Commission in Washington, DC on December 22, 2004.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–28474 Filed 12–27–04; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 05–04]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/OPS–ADMIN, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 05–04 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: December 21, 2004.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

19 NOV 2004
In reply refer to:
I-04/007202

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 05-04, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Jordan for defense articles and services estimated to cost $39 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal No. 05-04**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 05-04

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Jordan

(ii) **Total Estimated Value:**

Major Defense Equipment*	$32 million
Other	$ 7 million
TOTAL	$39 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 50 AIM-120C Advanced Medium Range Air-to-Air Missiles (AMRAAM), 51 LAU-129 Launch Rails, captive air training missiles, flight test instrumentation, software updates to support AMRAAM operational and training devices, missile containers, aircraft modification and integration, spare and repair parts, support and test equipment, publications and technical documentation, maintenance and pilot training, contractor support, other related elements of logistical and program support.

(iv) **Military Department:** Air Force (YJD)

(v) **Prior Related Cases, if any:** none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** 19 NOV 2004

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Jordan – AIM-120C Advanced Medium Range Air-to-Air Missiles

The Government of Jordan has requested a possible sale of 50 AIM-120C Advanced Medium Range Air-to-Air Missiles (AMRAAM), 51 LAU-129 Launch Rails, captive air training missiles, flight test instrumentation, software updates to support AMRAAM operational and training devices, missile containers, aircraft modification and integration, spare and repair parts, support and test equipment, publications and technical documentation, maintenance and pilot training, contractor support, other related elements of logistical and program support. The estimated cost is $39 million.

Proposed sale will enhance the foreign policy and national security objectives of the United States by improving the security of a key regional partner who has proven to be a vital force for political stability and peace in the Middle East.

Jordan needs these missiles to enhance the air-to-air self-defense capability of its F-16 aircraft and provide for increased interoperability with U.S. forces. Jordan requires AMRAAM in order to perform air defense missions following installation of the mid-life update on its F-16 aircraft. Jordan will have no difficulty absorbing these missiles into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Missile Systems of Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of additional U.S. Government or contractor representatives to Jordan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 05-04

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AIM-120C Advanced Medium Range Air-to-Air Missile (AMRAAM) is a supersonic, air launched, aerial intercept, guided missile featuring digital technology and micro-miniature solid-state electronics. The missile employs active radar target tracking, proportional navigation guidance, and active Radio Frequency target detection. It can be launched day or night, in any weather and increases pilot survivability by allowing the pilot to disengage after missile launch and engage other targets. AMRAAM capabilities include lookdown/shootdown, multiple launches against multiple targets, resistance to Electronic Countermeasures, and interception of high- and low-flying and maneuvering targets. Information on the AIM-120 missile ranges from Unclassified to Secret.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 04–28265 Filed 12–27–04; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

President's Information Technology Advisory Committee (PITAC)

ACTION: Notice of meeting.

SUMMARY: PITAC's Subcommittee on Computational Science will provide an update of its activities. PITAC will discuss the Subcommittee's presentation and provide feedback for use in guiding the Subcommittee's work. There will be an update on the dissemination of PITAC's report Revolutionizing Health Care Through Information Technology. The latter portion of the meeting focuses on a presentation and deliberation on PITAC's draft report on cyber security. Public input will be solicited during a public comment period. A small fraction of the meeting time may be allocated for other PITAC updates at the discretion of the co-chairs and the designated Federal officer.

DATES: Wednesday, January 12, 2005, 9 a.m.–3 p.m. eastern time.

ADDRESSES: National Science Foundation, Stafford I, Room 1235, 4201 Wilson Boulevard, Arlington, Virginia 22230.

SUPPLEMENTARY INFORMATION: This meeting will also be held via a teleconference and the Internet through the WebEx application. Information about registration for in-person or remote participation will be posted at PITAC's Web site *(http://www.nitrd.gov/pitac)* by December 23. Meeting information may also be obtained by calling 703–292–4873. The agenda for the meeting will be posted at PITAC's Web site when it becomes available.

FOR FURTHER INFORMATION: Contact Alan Inouye at the National Coordination Office for Information Technology Research and Development at 703–292–4873 or by e-mail at *inouye@nitrd.gov.*

Dated: December 21, 2004.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–28259 Filed 12–27–04; 8:45 am]
BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting date change.

SUMMARY: On Monday, October 4, 2004 (69 FR 59214) the Department of Defense announced closed meetings of the Defense Science Board (DSB) Task Force on December 9–10, 2004, at the Institute for Defense Analyses, 4850 Park Center Drive, Alexandria, VA. These meetings will now be held at Strategic Analysis Inc., 3601 Wilson Boulevard, Suite 500, Arlington, VA.

Dated: November 29, 2004.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–28260 Filed 12–27–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting date change.

SUMMARY: On Thursday, July 8, 2004 (69 FR 41231), the Department of Defense announced closed meetings of the Defense Science Board (DSB) Task Force on Future Strategic Strike Forces. The meeting originally scheduled for December 15–16, 2004, has been moved to December 14–16, 2004. The meeting will be held at Strategic Analysis Inc., 3601 Wilson Boulevard, Suite 500, Arlington, VA.

Dated: November 29, 2004.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–28261 Filed 12–27–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on Identifying and Sustaining U.S. Department of Defense/UK Ministry of Defence Defense Critical Technologies (Study) will meet in closed session on January 11, 2005, at Strategic Analysis, Inc., 3601 Wilson Boulevard, Arlington, VA. This Task Force will develop a methodology to identify unique defense technologies as well as commercially developed technologies needing augmentation to fulfill defense niche areas, and then apply the methodology to develop a list of defense critical technologies.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force should focus its effort on high leverage, differentiated and transformational technologies. The Study may then use this list of defense critical technologies to further assess the tools available to the U.S. DoD or UK MoD to develop its critical technology needs. Some of the considerations the Study should examine include mechanisms to develop niches in pre-existing technologies, foster new technology until the commercial marketplace takes over, or develop technology without any expectation of commercial development; the analysis should include a review of the applicable acquisition/business case. Finally, the Study should consider the impact of technology development in other countries and the implications that this may have on Anglo-U.S. unique needs.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: December 20, 2004.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–28262 Filed 12–27–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Management Oversight of Acquisition Organizations will meet in open session on January 10–11, 2005, and January 17–18, 2005, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. This Task Force should assess whether all major acquisition organizations within the Department have adequate management and oversight processes, including what changes might be necessary to implement such processes where needed.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will examine the oversight function with respect to Title 10 and military department regulations to ensure that proper checks and balances exist. The Task Force will review whether simplification of the acquisition structure could improve both efficiency and oversight.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: December 20, 2004.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–28263 Filed 12–27–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on Red Lessons Learned will meet in closed session on December 16–17, 2004, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. This Task Force will assess what useful information can our adversaries learn from U.S. military engagement and, particularly, what might they have learned from Operation Iraqi Freedom and Operation Enduring Freedom; identify the channels through which adversaries learn about U.S. capabilities; is there any evidence an adversary is adjusting to U.S. capabilities and what might the U.S. do to counter this; what are the indicators or observables that the Intelligence Community can focus on to determine if an adversary is engaging in this type of practice and do the indicators change in peacetime or wartime; do different technology insertion models exist; is there any evidence potential adversaries

are targeting the seams in the U.S. command and control alignment and planning process; and the preceding areas of concern focus primarily on the military operations phases, are the potential adversaries observing, analyzing and adapting during the preparation and stabilization phase?

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: November 29, 2004.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–28264 Filed 12–27–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is proposing to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

The Department of the Army is proposing to alter the existing system of records to add new records being maintained, i.e., biographic information including, but not limited to, name, date of birth, place of birth, height, weight, eye color, hair color, race and gender.

DATES: This proposed action will be effective without further notice on January 27, 2005, unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information Privacy Division, U.S. Army Records Management and Declassification Agency, ATTN: AHRC–PDD–FPZ, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 428–6504.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 24, 2004, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 29, 2004.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

A0380—19 SAIS

SYSTEM NAME:

Information Assurance For Automated Information Systems (AIS) and Defense Biometric Technology Files (July 28, 2003, 68 FR 44309).

CHANGES:

SYSTEM IDENTIFIER:

Replace entry with 'A0025—2 SAIS'.

SYSTEM NAME:

Delete entry and replace with 'Information Assurance for Automated Information Systems (AIS) and Department of Defense Biometric Information Systems'.

SYSTEM LOCATION:

Delete entry and replace with 'Defense Biometrics Fusion Center, 347 West Main Street, Clarksburg, WV 26306—2947 and at any Department of Defense system that collects, stores, accesses, retrieves, or uses biometrics technology to recognize the identity, or verify the claimed identity of an individual.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Individuals covered include, but is not limited to, military, civilian, and contractor personnel; military reserve personnel; Army and Air National Guard personnel; and other persons requiring or requesting access to DoD information and facilities.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Operator's/user's name, Social Security Number, organization, telephone number, and office symbol; security clearance; level of access; subject interest code; user identification code; data files retained by users; assigned password; magnetic tape reel identification; abstracts of computer programs and names and phone numbers of contributors; similar relevant information; biometrics templates, biometric images, supporting documents, and biographic information including, but not limited to, name, date of birth, place of birth, height, weight, eye color, hair color, race and gender.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with 'Public Law 106–246, Section 112; 10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; Department of Defense Directive 8500.1, Information Assurance (IA); DoD Instruction 8500.2, Information Assurance Implementation; Army Regulation 25—2, Information Assurance; and E.O. 9397 (SSN).'

PURPOSE(S):

Delete second paragraph and replace with 'To Control logical and physical access to DoD information and facilities, and to recognize the identity or verify the identity of individuals by using a measurable physical or behavioral characteristic.'

* * * * *

RETRIEVABILITY:

Add to entry 'and other biometric data'.

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'From the individual, DoD security offices, system managers, computer facility managers, automated interfaces for user codes on file at Department of Defense sites.'

* * * * *

A0025—2 SAIS

SYSTEM NAME:

Information Assurance for Automated Information systems (AIS) and Department of Defense Biometric Information Systems.

SYSTEM LOCATION:

Department of Defense Biometrics Fusion Center, 1600 Aviation Way, Bridgeport, WV 26330–9476, and at any Department of Defense system that collects, stores, accesses, retrieves, or

uses biometrics technology to recognize the identity, or verify the claimed identity of an individual.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered include, but is not limited to, military, civilian, and contractor personnel; military reserve personnel; Army and Air National Guard personnel, and other persons requiring or requesting access to DoD information and facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Operator's/user's name, Social Security Number, organization, telephone number, and office symbol; security clearance; level of access; subject interest code; user identification code; data files retained by users; assigned password; magnetic tape reel identification; abstracts of computer programs and names and phone numbers of contributors; similar relevant information; biometrics templates, biometric images, supporting documents, and biographic information including, but not limited to, name, date of birth, place of birth, height, weight, eye color, hair color, race and gender.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 106–246, Section 112; 10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; Department of Defense Directive 8500.1, Information Assurance (IA); DoD Instruction 8500.2, Information Assurance Implementation; Army Regulation 25–2, Information Assurance; and E.O. 9397 (SSN).

PURPOSE(S):

To administer passwords and identification numbers for operators/users of data in automated media; to identify data processing and communication customers authorized access to or disclosure from data residing in information processing and/or communication activities; and to determine propriety of individual access into the physical data residing in automated media.

To control logical and physical access to DoD information and facilities and to identify or verify the identity of individuals by using a measurable physical or behavioral characteristic.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Name, Social Security Number, subject, application program key word/author, and biometric template, and other biometric data.

SAFEGUARDS:

Computerized records maintained in a controlled area are accessible only to authorized personnel. Physical and electronic access is restricted to designated individuals having a need therefore in the performance of official duties.

RETENTION AND DISPOSAL:

Individual data remain on file while a user of computer facility; destroyed on person's reassignment or termination.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Department of the Army, 107 Army Pentagon, Washington, DC 20310–0107.

Director, Department of Defense Biometrics Management Office, 2530 Crystal Drive, Arlington, VA 22202–3934.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief Information Officer, Department of the Army, 107 Army Pentagon, Washington, DC 20310–0107.

For verification purposes, individual should provide full name, sufficient details to permit locating pertinent records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief Information Officer, Department of the Army, 107 Army Pentagon, Washington, DC 20310–0107.

For verification purposes, individual should provide full name, sufficient details to permit locating pertinent records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, DoD security offices, system managers, computer facility managers, automated interfaces for user codes on file at Department of Defense sites.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–28266 Filed 12–27–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is proposing to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 27, 2005, unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Office Division, U.S. Army Records Management and Declassification Agency, ATTN: AHRC–PDD–FPZ, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 428–6597.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 20, 2004.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

A0385–10/40 ASO

SYSTEM NAME:

Army Safety Management Information System (ASMIS) (May 15, 2002, 67 FR 34684).

CHANGES:

* * * * *

SYSTEM LOCATION:

Add to first paragraph ''and U.S. Army Center for Health Promotion and Preventive Medicine, 5158 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5403.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry ''DoD Instruction 6055.1, DoD Safety and Occupational Health Program''.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Add to entry ''Commander, U.S. Army Center for Health Promotion and Preventive Medicine, 5158 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5403.''

* * * * *

A0385–10/40 ASO

SYSTEM NAME:

Army Safety Management Information System (ASMIS).

SYSTEM LOCATION:

U.S. Army Safety Center, 4905 5th Avenue, Fort Rucker, AL 36362–5363, and the U.S. Army Center for Health Promotion and Preventive Medicine, 5158 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5403.

U.S. Army Corps of Engineers: Chief, Safety and Occupational Health Office, Headquarters, U.S. Army Corps of Engineers, 441 G Street, NW., Washington, DC 20314—1000, and all U.S. Army Corps of Engineers (USACE) Safety and Occupational Health Offices. Official mailing addresses are published as an Appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (includes contractors, volunteer personnel, and members of the public) involved in accidents incident to Army and U.S. Army Corps of Engineers operations and recreational facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include name of injured individual, Social Security Number, job title, date of injury, location of accident, activity at time of injury, type of injury, board findings, recommendations, witness statements, wreckage distribution diagrams, maintenance and material data, and other personal and accident related and environmental information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 5 U.S.C. 7902, Safety Programs; Public Law 91–596, Occupational Safety and Health Act of 1970; DoD Instruction 6055.1, DoD Safety and Occupational Health Program; Army Regulations 385–10, Army Safety Program; Army Regulation 385–40, Accident Reporting and Records; and E.O. 9397 (SSN).

PURPOSE(S):

Information will be used to monitor and facilitate the U.S. Army's and the USACE Safety and Occupational Health Offices' safety programs; to analyze accident experience and exposure information; and to support the Army's accident prevention efforts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Labor, the Federal Aviation Agency, the National Transportation Safety Board, and to Federal, State, and local agencies, and applicable civilian organizations, such as the National Safety Council, for use in a combined effort of accident prevention.

In some cases, data must also be disclosed to an employee's representative under the provisions of 29 CFR 1960.29.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes, electronic storage media and printouts.

RETRIEVABILITY:

Information is retrieved by individual's name and Social Security Number.

SAFEGUARDS:

Paper records are maintained in locked file cabinets. Information is accessible only by authorized personnel with appropriate clearance/access in the performance of their duties. Remote terminal accessible only by authorized personnel.

At USACE and USACHPPM the computer stored records are secured behind security doors, accessible only by authorized personnel provided password access.

RETENTION AND DISPOSAL:

Accident and incident case records and aviation accident and incident case records maintain for 5 years then destroy, except for: U.S. Army Safety Center and U.S. Army Corps of Engineers maintain for 30 years in current file area then destroy; Office of Corps of Engineers records created prior to 1 January 1982 maintain for 30 years then destroy. Environmental restoration reports are maintained for 50 years then destroyed (5 years in current file area then transferred to records holding area). Reports of artillery mis-firings or accidents and harmful chemical, biological and radiological exposures accumulated in combat or combat support elements are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Safety Center, 4905 5th Avenue, Fort Rucker, AL 36362–5363.

Commander, U.S. Army Center for Health Promotion and Preventive Medicine, 5158 Blackhawk Road, Aberdeen Proving Ground, MD 21010–5403.

Chief, Safety and Occupational Health Office, Headquarters, U.S. Army Corps of Engineers, 441 G Street, NW., Washington, DC 20314–1000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the appropriate system manager.

Individual must furnish his/her full name, Social Security Number, current address and telephone number, when and where the accident occurred, type of equipment involved in the accident, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the appropriate system manager.

Individual must furnish his/her full name, Social Security Number, current

address and telephone number, when and where the accident occurred, type of equipment involved in the accident, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records and reports of accident, injury, fire, morbidity, law enforcement, traffic accident investigations, vehicle accident reports, and marine accident/casualty reports, individual sick clips, and military aviation records/reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–28267 Filed 12–27–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Statement for the Proposed Hackensack Meadowlands Ecosystem Restoration Project, Hackensack Meadowlands District, Bergen and Hudson Counties, NJ: Feasibility Phase

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA), the New York District of the U.S. Army Corps of Engineers (Corps) is preparing an Environmental Impact Statement (EIS) in accordance with Council on Environmental Quality regulations as defined and amended in 40 CFR parts 1500–1508 (promulgated pursuant to NEPA); Corps' principles and guidelines as defined in Engineering Regulations (ER) 1105–2–100, Planning Guidance Notebook, and ER 200–2–2, Procedures for Implementing NEPA; and other applicable Federal and State environmental laws for the proposed ecosystem restoration project in the Hackensack Meadowlands District, Bergen and Hudson Counties, New Jersey.

The study area, known as the Hackensack Meadowlands District, is located approximately five miles west of New York City in northern New Jersey, and comprises 30.4 square miles in portions of 14 municipalities in two counties; Carlstadt, East Rutherford, Little Ferry, Lyndhurst, Moonachie, North Arlington, Ridgefield, Rutherford, South Hackensack, and Teterboro in Bergen County and Jersey City, Kearny, North Bergen, and Secaucus in Hudson County. The District is bisected by the Hackensack River and the western spur of the NJ Turnpike (US Interstate 95) and approximately bordered to the north by State Route 46; to the east by US routes 1 and 9 (Tonnelle Avenue) and the freight railroad owned by Norfolk Southern and CSX Corporation (the former Conrail main line); to the south by the Port Authority Trans Hudson (PATH) railroad and the Pulaski Skyway; and to the west by the Pascack Valley and (former) Kingsland railroads and State Route 17.

ADDRESSES: U.S. Army Corps of Engineers, New York District, 26 Federal Plaza, New York, NY, 10278–0090.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Shadel, Project Biologist and NEPA Coordinator, Planning Division, Environmental Analysis Branch; (212) 264–0570; or *William.P.Shadel@usace.army.mil.*

SUPPLEMENTARY INFORMATION: 1. The Hackensack Meadowlands Ecosystem Restoration Study is being carried out under the Corps' General Investigations Program. The study was authorized under the authorization of the Hudson-Raritan Estuary Feasibility Study in a resolution of the Committee on Transportation and Infrastructure of the U.S. House of Representatives, dated April 15, 1999, which reads:

> Resolved by the Committee on Transportation and Infrastructure of the United States House of Representatives, That, the Secretary of the Army is requested to review the reports of the Chief of Engineers on the New York and New Jersey Channels, published as House Document 133, 74th Congress, 1st Session; the New York and New Jersey Harbor Entrance Channels and Anchorage Areas, published as Senate Document 45, 84th Congress, 1st Session; and the New York Harbor, NY Anchorage Channel, published as House Document 18, 71st Congress, 2nd Session, as well as other related reports with a view to determining the feasibility of environmental restoration and protection relating to water resources and sediment quality within the New York and New Jersey Port District, including but not limited to creation, enhancement, and restoration of aquatic, wetland, and adjacent upland habitats.

Section 324 of the Water Resources Development Act (WRDA) of 1992, as amended by Section 550 of the WRDA of 1996, authorized the Secretary of the Army to provide design and construction assistance to the New Jersey Meadowlands Commission of the State of New Jersey for the development of an environmental Improvement Program within the Hackensack Meadowlands District.

2. To advance the restoration of specific sites during the preparation of the EIS, separate Environmental Assessments will be completed for Anderson Creek in Secaucus and other sites throughout the Hackensack Meadowlands District.

3. Federal agencies interested in participating as a Cooperating Agency are requested to submit a letter of intent to Colonel Richard J. Polo, Jr., District Engineer (*see* **ADDRESSES**).

4. It is estimated that a draft EIS will be completed by April 2007, subject to availability of funds.

Leonard Houston,

Chief, Environmental Analysis Branch, Planning Division.

[FR Doc. 04–28331 Filed 12–27–04; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Statement for the Proposed Lower Passaic River Ecosystem Restoration Project, Essex, Hudson, Passaic, and Bergen Counties, NJ: Feasibility Phase

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA), the New York District of the U.S. Army Corps of Engineers (Corps) is preparing an Environmental Impact Statement (EIS) in accordance with Council on Environmental Quality regulations as defined and amended in 40 CFR parts 1500–1508 (promulgated pursuant to NEPA); Corps' principles and guidelines as defined in Engineering Regulations (ER) 1105–2–100, Planning Guidance Notebook, and ER 200–2–2, Procedures for Implementing NEPA; and other applicable Federal and State environmental laws for the proposed ecosystem restoration project in the Lower Passaic River Basin located in the counties of Essex, Hudson, Passaic, and Bergen in New Jersey.

The study area is identified as the Lower Passaic River and its basin, which comprises the tidally influenced portion of the river from the Dundee

Dam to Newark Bay and the watershed of this portion of the river; the study area does not include the watershed and river upstream of the dam. Extensive habitat loss and degradation have greatly reduced the functional and structural integrity of ecosystems within the Lower Passaic River Basin. Both the U.S. Environmental Protection Agency and the Corps will develop a comprehensive watershed-based plan for both the remediation and restoration of the Lower Passaic River Watershed. This will include the identification of remediation actions and ecosystem restoration opportunities in the study area to support broader estuary-wide restoration efforts. Remediation actions may include sediment removal, cap placement, *in-situ* or *ex-situ* sediment decontamination, and shoreline stabilization, while complimentary restoration goals may include the restoration, creation, and enhancement of benthic habitat, aquatic habitat, tidal and non-tidal wetlands, riparian habitat, flood plains and other terrestrial habitats as well as shoreline stabilization. The Corps intends to prepare an EIS for the ecosystem restoration portion of this joint study.

ADDRESSES: U.S. Army Corps of Engineers, New York District, 26 Federal Plaza, New York, NY 10278–0090.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Shadel, Project Biologist and NEPA Coordinator, Planning Division, Environmental Analysis Branch; (212) 264–0570; or *William.P.Shadel@usace.army.mil.*

SUPPLEMENTARY INFORMATION: 1. The Lower Passaic River Ecosystem Restoration Study, the Water Resources Development Act component of this joint study, is being carried out under the Corps' General Investigations Program. The study was authorized under the Hudson-Raritan study authorization, in a resolution of the Committee on Transportation and Infrastructure of the U.S. House of Representatives, dated 15 April 1999, which reads:

Resolved by the Committee on Transportation and Infrastructure of the United States House of Representatives, That, the Secretary of the Army is requested to review the reports of the Chief of Engineers on the New York and New Jersey channels, published as House Document 133, 74th Congress, 1st Session; the New York and New Jersey Habor Entrance Channels and Anchorage Areas, published as Senate Document 45, 84th Congress, 1st Session; and the New York Harbor, NY Anchorage channel, published as House Document 18, 71st Congress, 2nd Session, as well as other related reports with a view to determining the feasibility of environmental restoration and protection relating to water resources and sediment quality within the New York and New Jersey Port District, including but not limited to creation, enhancement, and restoration of aquatic, wetland, and adjacent upland habitats.

A public scoping meeting is scheduled for spring 2005. Results from the public scoping meeting with Federal, State, and local agencies, as well as the public, will be addressed in the EIS.

3. Federal agencies interested in participating as a Cooperating Agency are requested to submit a letter of intent to Colonel Richard J. Polo, Jr., District Engineer (see **ADDRESSES**).

4. It is estimated that a draft EIS will be completed by March 2007, subject to availability of funds.

Leonard Houston,

Chief, Environmental Analysis Branch, Planning Division.

[FR Doc. 04–28332 Filed 12–27–04; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

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 proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before February 28, 2005.

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.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: December 22, 2004.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.

Title: Final Performance Report for the Jacob K. Javits Fellowship Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 115.

Burden Hours: 690.

Abstract: This information collection provides the U.S. Department of Education with information needed to determine if grantees have made substantial progress toward meeting the Program's objectives and allow Program staff to monitor and evaluate the Program. The Congress has mandated (through the Government's Performance and Results Act of 1993) that the U.S. Department of Education provide documentation about the progress being made by the Program.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2656. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Department of Education, 400 Maryland Avenue, SW.,

Potomac Center Plaza, 9th Floor, Washington, DC 20202. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@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. 04–28301 Filed 12–27–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 27, 2005.

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: December 21, 2004.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Section 704 Annual Performance Report (Parts I and II).

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 319.

Burden Hours: 11,165.

Abstract: Section 706(d), 721(b)(3), and 725(c) of the Rehabilitation Act of 1973, as amended (Act) and corresponding program regulations in 34 CFR parts 364, 365, and 366 require centers for independent living, Statewide Independent Living Councils (SILCs) and Designated State Units (DSUs) supported under Parts B and C of Chapter 1 of Title VII of the Act to submit to the Secretary of Education (Secretary) annual performance information and identify training and technical assistance needs.

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 2628. 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 Sheila Carey at her e-mail address *Sheila.Carey@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. E4–3825 Filed 12–27–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, 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 27, 2005.

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, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: December 21, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Independent Living Services for Older Individuals Who Are Blind.

Frequency: Annually.

Affected Public: Individuals or household; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 55.

Burden Hours: 440.

Abstract: The new form will be used to evaluate and monitor Independent Living Services for Older Individuals who are blind related to: (a) The type of services provided and the number of persons receiving each type of service and (b) the amounts and percentage of funds reported on each type of service provided.

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 2629. 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 Sheila Carey at her e-mail address *Sheila.Carey@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. E4–3826 Filed 12–27–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Fernald. The Federal Advisory Committee Act (Public Law No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Saturday, January 8, 2005, 8:30 a.m.–12 noon.

ADDRESSES: Fernald Closure Project Site, Crosby Township Senior Center, 8910 Willey Road, Harrison, Ohio 45030.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, The Perspectives Group, Inc., 1055 North Fairfax Street, Suite 204, Alexandria, VA 22314, at (703) 837–1197, or e-mail; *djsarno@theperspectivesgroup.com.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Goals:

- Finalize outline for History of the Fernald Citizens' Advisory Board.
- Develop plans for March History Workshop.

8:30 a.m.—Call to Order

8:35 a.m.—Updates and Announcements

9:30 a.m.—Plans to Document History of the Fernald Citizens' Advisory Board

10:15 a.m.—Break

10:30 a.m.—Planning for March Public Workshop on Fernald History

11:40 a.m.—Revised FY 2005 Meeting Plan

12:00 p.m.—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC on December 22, 2004.

Carol A. Matthews,

Acting Advisory Committee Management Officer.

[FR Doc. 04–28387 Filed 12–27–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science

High Energy Physics Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, February 14, 2005; 8:30 a.m. to 6 p.m. and Tuesday, February 15, 2005; 8:30 a.m. to 4 p.m.

ADDRESSES: Hilton Washington Embassy Row, 2015 Massachusetts Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Bruce Strauss, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; SC–20/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone: 301–903–3705.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda: Agenda will include discussions of the following:

Monday, February 14, 2005, and Tuesday, February 15, 2005

- Discussion of Department of Energy High Energy Physics Programs.
- Discussion of National Science Foundation Elementary Particle Physics Program.
- Reports on and Discussions of Topics of General Interest in High Energy Physics.
- Public Comment (10-minute rule).

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Panel,

you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Bruce Strauss, 301–903–3705 or *Bruce.Strauss@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 90 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW.; Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on December 22, 2004.

Carol A. Matthews,

Acting Advisory Committee Management Officer.

[FR Doc. 04–28390 Filed 12–27–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Nuclear Energy Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Nuclear Energy Research Advisory Committee. The Federal Advisory Committee Act (Public Law No. 92–463, 86 Stat. 770), requires that public notice of the meetings be announced in the **Federal Register**.

DATES: Tuesday January 11, 2005, 8:30 a.m. to 5 p.m. and Wednesday, January 12, 2005, 9 a.m. to 12:15 p.m.

ADDRESSES: Hyatt Arlington, 1325 Wilson Blvd., Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Roth, Designated Federal Officer, Nuclear Energy Research Advisory Committee, U.S. Department of Energy, NE–20, 1000 Independence Avenue, SW., Washington DC 20585, Telephone Number 301–903–5501, E-mail: *mark.roth@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* To provide advice to the Director of the Office of Nuclear Energy, Science and Technology (NE) of the Department of Energy on the many complex planning, scientific and technical issues that arise in the development and implementation of the Nuclear Energy research program.

Tentative Agenda

Tuesday January 11, 2005

Welcome Remarks.

Status of Office of Nuclear Energy, Science and Technology Programs and Budget.

- R&D Programs.
- Idaho Site.

Subcommittee Reports.

Organizational Issues.

Wednesday, January 12, 2005

Subcommittee Reports and Organization Issues (continued).

Open Discussion.

Public comment period.

Public Participation: The day and a half meeting is open to the public on a first-come, first-served basis because of limited seating. Written statements may be filed with the committee before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Mark Roth at the address or telephone listed above. Requests to make oral statements must be made and received five days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chair of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Reading Room. 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on December 22, 2004.

Carol A. Matthews,

Acting Advisory Committee Management Officer.

[FR Doc. 04–28389 Filed 12–27–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–378–002]

Cameron LNG, LLC; Notice of Amendment To Authorization

December 20, 2004.

Take notice that on December 9, 2004, Cameron LNG, LLC (Cameron) filed a request under section 3 of the NGA for an amendment to its authorization for import facilities that was previously granted in Docket No. CP02–378–000. Cameron notes that, order issued on September 11, 2003, Cameron was authorized to construct and operate facilities to import liquefied natural gas (LNG) near Hackberry, Cameron Parish, Louisiana.

Cameron seeks amended authority to make modifications to the berthing facilities at its LNG terminal. Cameron requests approval to modify the terminal's berthing facilities to allow a larger variety of LNG tankers to use the approved LNG terminal. Cameron says that it has determined that certain limited changes to facilities appurtenant to its LNG import terminal are desirable in order to: (1) Enhance operational safety; (2) improve the ability of LNG tankers to perform emergency departures; and (3) accommodate the berthing of the next generation of larger LNG tankers. The proposed modifications will require increased dredging and the addition of soil depositional areas to accommodate increased dredge material. The modifications also will require either the abandonment in place or relocation of portions of pipeline(s) owned by Hilcorp Energy I, L.P. that transverse through the terminal and berthing area.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to 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: January 12, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3836 Filed 12–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–123–000]

Destin Pipeline Company, L.L.C.; Notice of Proposed Changes In FERC Gas Tariff

December 20, 2004.

Take notice that on December 15, 2004, Destin Pipeline Company, L.L.C. (Destin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective January 14, 2005.

Destin states that this filing, made in accordance with the provisions of section 154.204 of the Commission's regulations, is to make minor administrative and clarifying changes to its Tariff.

Destin states that copies of this filing are being served on all affected shippers and applicable state regulatory agencies.

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. E4–3833 Filed 12–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–152–032]

Enbridge Pipelines (KPC); Notice of Refund Report

December 21, 2004.

Take notice that on December 13, 2004, Enbridge Pipelines (KPC), formerly Kansas Pipeline Company (KPC), (Enbridge KPC) submitted a refund plan pursuant to Enbridge Pipelines (KPC), 109 FERC ¶ 61,042 (2004) (October 8 Order), issued in Docket No. CP96–152–030.

Enbridge KPC states that the refund plan describes the calculation of refunds relating to the initial rates ultimately approved by the Commission for Enbridge KPC in Docket No. CP96–152–030. Enbridge KPC states that the proposed refund is calculated in accordance with the agreement it has reached with its various firm and interruptible transportation customers and the October 8 Order. Enbridge KPC explains that, consistent with the October 8 Order, the refund plan details the amount of any refund due to each customer, with separately stated estimates of interest due; the calculations supporting the refund amounts; and a proposal for distribution of any such refunds.

In order to provide its customers with the refund amounts set forth in this refund plan as soon as possible, Enbridge KPC also requests that the Commission grant expedited treatment of this filing and issue an order accepting the terms of Enbridge KPC's refund plan by December 30, 2004.

Enbridge KPC states that copies of this filing are being mailed or, if requested, transmitted by e-mail to all affected customers of Enbridge KPC and interested state commissions, as well as to all parties appearing on the Commission's official service list in this docket.

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.

Protest Date: 5 p.m. Eastern Time on December 29, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3840 Filed 12–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–52–057]

Southern Star Central Gas Pipeline, Inc.; Notice of Refund Report

December 21, 2004.

Take notice that on December 15, 2004, Southern Star Central Gas Pipeline, Inc. (Southern Star), formerly Williams Gas Pipelines Central, Inc., submitted a compliance filing pursuant to Commission order issued September 10, 1997, in Docket Nos. RP97–369–000, *et al.*, regarding collection of Kansas ad valorem taxes and the subsequent refunds.

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 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.

Protest Date: 5 p.m. Eastern Time on December 29, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3839 Filed 12–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–27–000, et al.]

WPS Energy Services, Inc.; Electric Rate and Corporate Filings

December 17, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. WPS Energy Services, Inc., WPS Power Development, Inc.

[Docket No. EC05–27–000]

Take notice that on December 8, 2004, WPS Energy Services, Inc. (ESI) and WPS Power Development, Inc. (PDI) (collectively, Applicants) filed pursuant to section 203 of the Federal Power Act U.S.C. 16 and part 33 of the Commission's regulations 18 CFR part 33 (2004), an application requesting Commission authorization to engage in an internal restructuring whereby: (1) PDI will be merged into ESI; and (2) ESI will transfer the assets formerly owned by PDI into a new, wholly-owned subsidiary of ESI called WPS Power Development, LLC.

Applicants state that copies of the filing were served upon the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment Date: 5 p.m. Eastern Time on December 29, 2004.

2. Klondike Wind Power II LLC

[Docket No. EG05–23–000]

On December 14, 2004, Klondike Wind Power II LLC (Klondike II), 1125 NW Couch, Suite 700, Portland, Oregon 97209, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Klondike II, states that it is an Oregon limited liability company and that it will be engaged directly and exclusively in the business of owning all or part of one or more eligible facilities, and selling electric energy at wholesale. Klondike II explains that it developing a 75-megawatt wind power generation facility to be located in Sherman County, Oregon and that the project will be an eligible facility under section 32(a)(2) of PUHCA.

Klondike II states that it has served a copy of the filing on the Securities and Exchange Commission and the Oregon Public Utility Commission.

Comment Date: 5 p.m. Eastern Time on January 4, 2005.

3. Sweetwater Wind 2 LLC

[Docket No. EG05–24–000]

Take notice that on December 15, 2004, Sweetwater Wind 2 LLC, a Delaware limited liability company (SWW2), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

SWW2 states that it intends to operate a 91.5–MW wind powered generation facility currently under construction near Sweetwater, Nolan County, Texas (the Facility). SWW2 explains that, when completed, the electric energy produced by the facility will be sold into the wholesale power market of the Electric Reliability Council of Texas. SWW2 states that the facility is expected to begin commercial operation by December 31, 2004.

Comment Date: 5 p.m. Eastern Time on January 5, 2005.

4. New York Independent System Operator, Inc.

[Docket No. EL03–26–003]

Take notice that on December 2, 2004, the New York Independent System Operator, Inc., (NYISO) tendered for filing a refund report as required by the Commission's November 17 order in the above captioned docket.

Comment Date: 5 p.m. Eastern Time on December 27, 2004.

5. Credit Suisse First Boston International

[Docket No. ER01–2656–003]

Take notice that on December 13, 2004, Credit Suisse First Boston International (CSFBI) submitted a response to the Commission's November 23, 2004 deficiency letter issued in Docket No. ER01–2656–002. CBFBI states that the filing serves as an amendment to CSFBI's September 20, 2004 filing of a triennial market power analysis.

Comment Date: 5 p.m. Eastern Time on January 3, 2005.

6. ISO New England Inc.

[Docket No. ER02–2330–032]

Take notice that on December 13, 2004, ISO New England Inc. (ISO) submitted a compliance filing providing a status report on the implementation of standard market design in New England.

Comment Date: 5 p.m. Eastern Time on January 3, 2005.

7. New York Independent System Operator, Inc.

[Docket No. ER04–1188–001]

Take notice that on December 10, 2004, the New York Independent

System Operator, Inc. (NYISO) submitted a proposed revision to its market administration and control area services tariff that would extend a sunset provision for demand reduction incentive payments under the day-ahead demand response program through October 31, 2005. The NYISO states that this tariff revision was submitted to comply with the Commission's letter order issued October 29, 2004 in Docket No. ER04–1188–000.

The NYISO states that it has served a copy of this filing upon all parties that have executed service agreements and the electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment Date: 5 p.m. Eastern Time on January 3, 2005.

8. Midwest Independent Transmission System Operator, Inc.; Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C., et al.; Midwest Independent Transmission System Operator, Inc., PJM Interconnection, L.L.C., et al.; Ameren Services Company, et al.

[Docket Nos. ER05–6–001, EL04–135–003, EL02–111–020, EL03–212–017]

Take notice that, on December 10, 2004, PJM Interconnection L.L.C. (PJM) and the PJM Transmission Owners, acting through the PJM and PJM West Transmission Owners Agreement Administrative Committees, tendered for filing with the Commission a correction to the revisions to the PJM open access transmission tariff that were submitted with a compliance filing in this proceeding on November 24, 2004. PJM requests an effective date of December 1, 2004.

PJM states that copies of this filing were served upon all PJM members and utility regulatory commissions in the PJM Region and on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. Eastern Time on January 7, 2005.

9. Midwest Independent Transmission System Operator, Inc.; Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, LLC, et al.; Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, LLC, et al.; Ameren Services Company, et al.

[Docket Nos. ER05–6–007, EL04–135–009, EL02–111–026, EL03–212–023]

Take notice that, on December 13, 2004, American Electric Power Service Corporation, (AEP) Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., and Dayton Power and Light Company (collectively, Companies) submitted a compliance filing in response to the Commission's order issued November 18, 2004, as clarified by the Commission's November 30, 2004 order in Docket Nos. ER05–6–000, EL04–135–000, EL02–111–010 and EL03–212–018. AEP states that the Companies request an effective date of December 1, 2004.

AEP states that copies of this filing have been served on the entities listed on the official service list.

Comment Date: January 7, 2005.

10. TransCanada Hydro Northeast Inc.

[Docket No. ER05–111–001]

Take notice that on December 13, 2004, TransCanada Hydro Northeast Inc. (TC Hydro NE) filed with the Commission an amendment to its October 29, 2004 application for market-based rate authority. TC Hydro NE notes that the application requested that the Commission accept for filing a Market-Based Tariff for TC Hydro NE, and otherwise grant TC Hydro NE the authority to sell energy and capacity and ancillary services in wholesale transactions at negotiated, market-based rates pursuant to part 35 of the Commission's regulations.

Comment Date: 5 p.m. Eastern Time on January 3, 2005.

11. PSEG Power New York, Inc.

[Docket No. ER05–323–000]

Take notice that on December 13, 2004, PSEG Power New York, Inc. (PSEG Power NY) pursuant to section 205 of the Federal Power Act (FPA), 16 U.S.C. 824b (2000), and section 35.13 of the regulations of the Commission, 18 CFR part 335.13 (2004), requests Commission approval to: (1) Add the Bethlehem Energy Center generating station to the definition of ''Generating Unit;'' (2) modify their respective tariff regarding the manner in which their revenues are billed on a monthly basis; and (3) clarify the cost elements that comprise the actual operating costs, to explicitly include two additional cost elements to the list of operating costs and to eliminate the corresponding SAP references. PSEG Power NY requests an effective date of January 1, 2005.

PSEG Power NY states that it served a copy of this filing on the parties on the Commission's official service list for this docket.

Comment Date: 5 p.m. Eastern Time on January 3, 2005.

12. PSEG Fossil LLC and PSEG Nuclear LLC

[Docket No. ER05–324–000]

Take notice that on December 13, 2004, PSEG Fossil LLC and PSEG Nuclear LLC (PSEG Fossil) and PSEG Nuclear LLC (collectively, the Applicants) pursuant to section 205 of the Federal Power Act (FPA), 16 U.S.C. 824b (2000), and section 35.13 of the regulations of the Commission, 18 CFR part 335.13 (2004), requests Commission approval to amend their respective tariff regarding the manner in which their revenues are billed on a monthly basis, and to clarify the cost elements that comprise the actual operating costs and to explicitly include two additional cost elements to the list of operating costs.

Applicants state that copies of this filing have been served on the official service list in the above-referenced docket.

Comment Date: 5 p.m. Eastern Time on January 3, 2005.

13. Credit Suisse First Boston Energy, LLC; Credit Suisse First Boston International

[Docket Nos. ER05–325–000, ER05–327–000]

Take notice that on December 13, 2004, Credit Suisse First Boston Energy, LLC (CSFBE) petitioned the Commission for acceptance of CSFBE Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. CSFBE states that on December 13, 2004, Credit Suisse First Boston International (CSFBI) tendered for filing pursuant to section 35.15 of the Commission's regulations, 18 CFR 35.15 (2004), a notice of CSFBI's Electric Rate Schedule FERC No. 1. CSFBI states that it intends to cancel its rate schedule conditioned on the acceptance of CSFBE's Rate Schedule FERC No. 1 and requests that the cancellation of its rate schedule become effective as of the date on which the market-based rate tariff of CSFBE becomes effective.

CSFBE states that it intends to engage in wholesale electric energy and capacity transactions as a marketer and a broker. CSFBE further states that it is not in the business of generating or transmitting electric power. CSFBE explains that it is a Limited Liability Company formed under the laws of the State of Delaware with its principal executive offices in New York, New York. CSFBE indicates that in transactions where CSFBE sells electric power, it proposes to make such sales on rates, terms and conditions to be

mutually agreed to with the purchasing party.

Comment Date: 5 p.m. Eastern Time on January 3, 2005.

14. Southwest Power Pool, Inc.

[Docket No. ER05–326–000]

Take notice that on December 13, 2004, Southwest Power Pool, Inc. (SPP) submitted to the Commission revision to its regional Open Access Transmission Tariff (OATT). Specifically, SPP states that it proposes to revise attachments J and P of its OATT in order to ensure proper cost allocation and capacity administration. SPP requests an effective date of February 1, 2005.

SPP states that it has served a copy of its transmittal letter on each of its members and customers. SPP also states that a complete copy of this filing will be posted on the SPP Web site *http://www.spp.org,* and is also being served on all affected state commissions.

Comment Date: 5 p.m. Eastern Time on January 3, 2005.

15. Rainbow Energy Marketing Corporation

[Docket No. ER94–1061–024

Take notice that on December 13, 2004, Rainbow Energy Marketing Corporation (Rainbow) tendered for filing a triennial review pursuant to the Commission's order issued June 10, 1994 in Docket No. ER94–1061–000.

Comment Date: 5 p.m. Eastern Time on January 3, 2005.

16. Southern Indiana Gas and Electric Company

[Docket No. ER96–2734–003]

Take notice that on December 10, 2004, Southern Indiana Gas and Electric Company, d/b/a Vectren Energy Delivery of Indiana, Inc. (Vectren) tendered for filing an application for renewal of its market-based rate authority and its three-year updated market power analysis as well as other revisions to its MBR Tariff, including revisions to incorporate the Commission's new market behaviour rules.

Vectren states that copies of the filing were served upon the public utility's jurisdictional customers who are located in its control area and the Indiana Utility Regulatory Commission.

Comment Date: 5 p.m. Eastern Time on January 3, 2005.

17. ISO New England Inc., et al., Bangor Hydro-Electric Company, et al., Consumers of New England v. New England Power Pool

[Docket Nos. RT04–2–008 and ER04–116–008, ER04–157–010, EL01–39–008]

Take notice that on December 10, 2004, the New England Power Pool (NEPOOL), through the NEPOOL Participants Committee, ISO New England Inc. (ISO–NE) and the New England transmission owners (collectively, the Settling Parties) submitted a compliance filing to explain how a review board process will operate under the regional transmission organization arrangements for New England. NEPOOL states that the filing is in response to the requirements of the Commission's order issued on November 3, 2004.

NEPOOL states that the copies of the compliance filing were sent to the NEPOOL Participants and the New England state governors and regulatory commissions, as well as all parties on the official service lists in the above-captioned proceedings.

Comment Date: 5 p.m. Eastern Time on January 3, 2005.

18. ISO New England Inc., et al., Bangor Hydro-Electric Company, et al., The Consumers of New England v. New England Power Pool

[Docket Nos. RT04–2–009 and ER04–116–009, ER04–157–011, EL01–39–009]

Take notice that on December 10, 2004, ISO New England Inc., (ISO) and the New England transmission owners New England transmission owners consist of Bangor Hydro-Electric Company; Central Maine Power Company; New England Power Company; Northeast Utilities Service Company on behalf of its operating companies: The Connecticut Light and Power Company, Western Massachusetts Electric Company, Public Service Company of New Hampshire, Holyoke Power and Electric Company, and Holyoke Water Power Company; NSTAR Electric & Gas Corporation on behalf of its operating affiliates: Boston Edison Company, Commonwealth Electric Company, Canal Electric Company, and Cambridge Electric Light Company; The United Illuminating Company; Vermont Electric Power Company, Inc.; Fitchburg Gas and Electric Light Company; and Unitil Energy Systems, Inc., submitted a report in response to the Commission's order issued November 3, 2004, 109 FERC ¶61,147 (2004).

ISO states that copies of said filing have been served upon all parties to this proceeding, upon all NEPOOL Participants (electronically), non-participant transmission customers, and the governors and regulatory agencies of the six New England states.

Comment Date: 5 p.m. Eastern Time on January 3, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E4–3832 Filed 12–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–29–000; CP05–30–000; and CP05–31–000]

Freebird Gas Storage, L.L.C.; Notice of Site Visit

December 20, 2004.

On January 5, 2005, the Office of Energy Projects (OEP) staff will conduct

a pre-certification site visit of Freebird Gas Storage, L.L.C.'s (Freebird) planned Freebird Gas Storage Project. The project consists of about 4.28 miles of 16-inch-diameter pipeline that would connect Freebird's gas storage to the ''500 leg'' of Tennessee Gas Pipeline Company in Lamar County, Alabama.

We will view the proposed route and variations that are being considered for the planned pipeline and gas storage. Examination will be by automobile and on foot. Representatives of Freebird will be accompanying the OEP staff.

All interested parties may attend. Those planning to attend must provide their own transportation. Those interested in attending should meet at 8 a.m. (c.s.t.) in the parking lot/area of the Econolodge Hamilton, located at 2031 Military Street South in Hamilton, Alabama.

For additional information, please contact the Commission's Office of External Affairs at 1–866–208–FERC.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3834 Filed 12–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

December 20, 2004.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or prohibited off-the-record communication relevant to the merit's of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are 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 eLibrary (FERRIS) 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.

Exempt:

Docket No.	Date filed	Presenter or requester
1. CP04–36–000	12–8–04	Hon. Edward M. Lambert, Jr.
2. CP04–36–000 CP04–223–000	12–15–04	Hugh Thomas.[1]
3. CP04–223–000	12–15–04	Hugh Thomas.[2]
4. Project No. 2105–000	12–15–04	Lorie Jaimes.
5. Project No. 2114–000	12–15–04	Roger D. Whitlam, Ph.D.

[1] Workshop Summary—11–17–04
[2] Workshop Summary—12–07–04

Magalie R. Salas,

Secretary.

[FR Doc. E4–3835 Filed 12–27–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7855–8]

Environmental Laboratory Advisory Board (ELAB) Meeting Dates, and Agenda

AGENCY: Environmental Protection Agency.

ACTION: Notice of teleconference meetings.

SUMMARY: The Environmental Protection Agency's Environmental Laboratory Advisory Board (ELAB), as previously announced, will have teleconference meetings on January 19, 2005 at 1 p.m. ET; February 15, 2005 at 1 p.m. ET; March 16, 2005 at 1 p.m. ET; April 20, 2005 at 1 p.m. ET; May 18, 2005 at 1 p.m. ET; and June 15, 2005 at 1 p.m. ET to discuss the ideas and views presented at the previous ELAB meetings, as well as new business. Items to be discussed by ELAB over these coming meetings include: (1) What actions can be taken to expand the number of laboratories seeking accreditation under the National Environmental Laboratory Accreditation Conference (NELAC) program; (2) homeland security issues affecting the laboratory community; (3) ELAB support to the Agency's Forum on Environmental Measurements (FEM); (4) what needs to be done to facilitate the implementation of the use of a performance approach in environmental monitoring; (5) increasing state participation in NELAC; and (6) follow-up on some of ELAB's past recommendations and issues. In addition to these teleconference, ELAB will be hosting their next, public face-to-face meeting on February 2, 2005 at the Sheraton Society Hill in

Philadelphia, Pennsylvania from 8:30–11:30 a.m. ET. An Open Forum session for the public to present ideas to ELAB for consideration will also be hosted the evening prior to their face-to-face meeting on February 1, 2005, 30 minutes following the close of the conference sessions being held that day.

Written comments on laboratory accreditation issues and/or environmental monitoring issues are encouraged and should be sent to the ELAB Designated Federal Official, Ms. Lara P. Autry, U.S. EPA (E243–05), 109 T. W. Alexander Drive, Research Triangle Park, NC 27709, faxed to (919) 541–4261, or e-mailed to *autry.lara@epa.gov.* Members of the public are invited to listen to the teleconference calls and attend the face-to-face meetings. Time permitting, the public will be allowed to comment on issues discussed during current and previous ELAB meetings. Those persons interested in attending should call Lara P. Autry at (919) 541–5544 to obtain teleconference information. The number of lines available for the teleconferences, however, are limited and will be distributed on a first come, first serve basis. Preference will be given to a group wishing to attend over a request from an individual.

Henry L. Longest, II,

Deputy Assistant Administrator, Office of Research and Development.

[FR Doc. 04–28360 Filed 12–27–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7855–7]

EPA National Advisory Council for Environmental Policy and Technology; Notification of Public Advisory Committee Teleconference Meeting

AGENCY: Environmental Protection Agency (EPA) .

ACTION: Notification of Public Advisory Committee Teleconference Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the National Advisory Council for Environmental Policy and Technology (NACEPT) will meet in a public teleconference on January 13, 2005, from 3:00 p.m. to 4:30 Eastern Time. The meeting will be hosted out of the main conference room, U.S. EPA, 655 15th Street, NW., Suite 800, Washington, DC 20005. The meeting is open to the public, however, due to limited space, seating will be on a registration-only basis. For further information regarding the teleconference meeting, please contact the individual listed below.

Background: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, PL 92463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues. NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and recommendations on policy issues and serves as a sounding board for new strategies that the Agency is developing.

Purpose of Meeting: A workgroup under the auspices of NACEPT has prepared a draft advice letter on the environmental indicators database. The purpose of this teleconference is for the NACEPT Council to review, discuss, and decide whether to approve the letter.

Availability of Review Materials: If you wish to receive a copy of the draft advice letter developed by the NACEPT workgroup, please contact Ms. Altieri.

SUPPLEMENTARY INFORMATION: Members of the public wishing to gain access to the conference room on the day of the meeting must contact Ms. Sonia Altieri, Designated Federal Officer for NACEPT, U.S. Environmental Protection Agency (1601E), Office of Cooperative Environmental Management, 655 15th Street, NW., Suite 800, Washington, DC 20005; telephone/voice mail at (202) 233–0061 or via e-mail at *altieri.sonia@epa.gov.* The agenda will be available to the public upon request. If you wish to make oral comments or to submit written comments to the Council, please contact Ms. Altieri by January 7, 2005.

General Information: Additional information concerning the National Advisory Council for Environmental Policy and Technology (NACEPT) can be found on our Web site (*http://www.epa.gov/ocem*).

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. Altieri at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: December 16, 2004.

Sonia Altieri,

Designated Federal Officer.

[FR Doc. 04–28361 Filed 12–27–04; 8:45 am]

BILLING CODE 6560–50–P

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Administration

Notice of Meeting of the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction

ACTION: Notice.

SUMMARY: The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction (''Commission'') will meet in closed session on Wednesday, January 12, 2005, and Thursday, January 13, 2005, in its offices in Arlington, Virginia.

Executive Order 13328 established the Commission for the purpose of assessing whether the Intelligence Community is sufficiently authorized, organized, equipped, trained, and resourced to identify and warn in a timely manner of, and to support the United States Government's efforts to respond to, the development of Weapons of Mass Destruction, related means of delivery, and other related threats of the 21st Century. This meeting will consist of briefings and discussions involving classified matters of national security, including classified briefings from representatives of agencies within the Intelligence Community; Commission discussions based upon the content of classified intelligence documents the Commission has received from agencies within the Intelligence Community; and presentations concerning the United States' intelligence capabilities that are based upon classified information. While the Commission does not concede that it is subject to the requirements of the Federal Advisory Committee Act (FACA), 5 United States Code Appendix 2, it has been determined that the January 12–13 meeting would fall within the scope of exceptions (c)(1) and (c)(9)(B) of the Sunshine Act, 5 United States Code, Sections 552b(c)(1) & (c)(9)(B), and thus could be closed to the public if FACA did apply to the Commission.

DATES: Wednesday, January 12, 2005 (9 a.m. to 5 p.m.) and Thursday, January 13, 2005. (9 a.m. to 2 p.m.).

ADDRESSES: Members of the public who wish to submit a written statement to the Commission are invited to do so by facsimile at (703) 414–1203, or by mail at the following address: Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, Washington, DC, 20503. Comments also may be sent to

the Commission by e-mail at *comments@wmd.gov.*

FOR FURTHER INFORMATION CONTACT: Brett C. Gerry, Associate General Counsel, Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, by facsimile, or by telephone at (703) 414–1200.

Keith L. Roberts,

Executive Office of the President, Office of Administration, Deputy General Counsel.

[FR Doc. 04–28345 Filed 12–27–04; 8:45 am]

BILLING CODE 3130–W5–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, January 3, 2005.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 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.

Board of Governors of the Federal Reserve System, December 23, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–28500 Filed 12–23–04; 1:21 pm]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02060]

National Cancer Prevention and Control Program; Notice of Availability of Funds; Amendment 4

A notice announcing the availability of fiscal year (FY) 2002 funds for cooperative agreements for the National Cancer Prevention and Control Program (NCPCP) was published in the **Federal Register** April 23, 2002, Volume 67, Number 78, pages 19932–19950. The notice is amended as follows:

Page 19935, Column 1, Section G.2.d. Funding Preference, was amended in Amendment 2 to read ''Funding preference may be given to applicants from the prior year's applications who were considered Approved but Unfunded (ABU). Those applicants will be named in the annual open season announcement.'' Delete and replace with ''There are no funding preferences applicable to this component.''

Page 19937, Column 3, Section G.4.a.(6)(b) delete ''November 1, 2002'' and replace with ''August 1, of the funding year''

Page 19938, Column 1, Section G.4.b, after the sentence ''For each proposal, the following information should be submitted:'', move the following sentence ''An Executive Summary consisting of a brief summary of proposed project, including goals, objectives, and description of who will complete the work.'', which was added in Amendment 2 to read: G.4.b.(a) Executive Summary: ''A brief summary of proposed project, including goals, objectives, and description of who will complete the work.'' Renumber the current G.4.b.(a) through G.4.b.(e) to G.4.b.(b) through G.4.b.(f).

Page 19938, Column 2, under Section G.5.b. ''Moving from a Planning Program to an Implementation Program within the five-year Project Period:'', delete G.5.b.(1) through G.5.b.(3) and replace with: G.5.b.(1) Demonstrates success in meeting Planning Program Performance Measures as outlined in G.5.a.(1), (2) and (3). G.5.b.(2) Responds to Implementation Program ''Content'', section G.4. and ''Implementation Activities'', Page 19935, Column 3, section G.3.a.(2) of this program announcement.

Page 19939, Column 3, Section H.2.b.(1) 60/40 Requirement:, delete the first two sentences, ''Not less than 60 percent of cooperative agreement funds must be spent for screening, tracking, follow-up and the provision of appropriate individually provided support services. Cooperative agreement funds supporting public education and outreach, professional education, quality assurance and improvement, surveillance and program evaluation, partnerships, and management may not exceed 40 percent of the approved budget [Section 1503(a)(1) and (4) of the PHS Act, as amended].'' and replace with ''Not less than 60 percent of cooperative agreement funds must be spent for screening & diagnostic services, to include case management, tracking and follow-up and the provision of appropriate individually provided support services. Cooperative agreement funds supporting program management; data management; quality assurance/quality improvement; evaluation; partnerships; professional development and recruitment, to include public education, outreach and in reach may not exceed 40 percent of the approved budget [Section 1503(a)(1) and (4) of the PHS Act, as amended].''

Page 19941, Column 2, Section H.4.a.(4), replace ''period September 30, 2002 through June 29, 2003'' with ''project year'' and replace ''Attachment C'' with ''Attachment B''.

Page 19941, Column 2, last paragraph and continuing to Column 3, starting with ''Applicants should include an attachment to the workplan * * *, and ending after * * * ''Screening Projections Matrix'' in the appendices.'', delete.

Page 19941, Column 3, replace ''Attachment E'' with ''Attachment C''.

Page 19942, Column 1, Section H.4.a.(5)(a)[6], which was added in Amendment 2, replace ''National Cancer Conference'' with ''National Cancer Prevention and Control Conference''.

Page 19942, Column 1, in fourth full paragraph, replace ''Attachment F'' with ''Attachment D''.

Page 19942, Column 1, Section H.4.a.(6)(a), replace ''Attachment G'' with ''Attachment E''.

Page 19942, Column 2, Section H.4.a.(6)(c), which was added in Amendment 3, delete entire section.

Page 19943, Column 3, Section H.5.d., replace ''Attachment H'', which was added in Amendment 3, with ''Attachment F''.

Page 19944, Column 3, Section I.2.e.(3), replace ''Attachment I'' with ''Attachment G''.

Dated: December 20, 2004.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–28248 Filed 12–27–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 69 FR 63154–63156, dated October 29, 2004, is amended to reflect the Order of Succession for the Centers for Disease Control and Prevention.

Section C–C, Order of Succession:

Delete in its entirety Section C–C, Order of Succession, and insert the following:

During the absence or disability of the Director, Center for Disease Control and Prevention (CDC), or in the event of a vacancy in that office, the first official listed below who is available shall act as Director, except that during a planned period of absence, the Director may specify a different order of succession:

1. Chief Operating Officer, CDC.
2. Chief of Science, CDC.
3. Chief of Public Health Improvement.
4. Director, Coordinating Center for Infectious Diseases.*

* official organizational structure pending approval.

Dated: December 13, 2004.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–28377 Filed 12–27–04; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0531]

Guidance for Industry and FDA Staff on Class II Special Controls Guidance Document: Assisted Reproduction Laser Systems; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Class II Special Controls Guidance Document: Assisted Reproduction Laser Systems.'' This guidance document describes a means by which assisted reproduction laser systems may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify the assisted reproduction laser systems into class II (special controls). This guidance document is immediately in effect as the special control for assisted reproduction laser systems, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Class II Special Controls Guidance Document: Assisted Reproduction Laser Systems'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Michael T. Bailey, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180, ext. 130.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance describes a means by which assisted reproduction laser systems may comply with the requirement of special controls for class II devices. An assisted reproduction laser system images, targets, and controls the power and pulse duration of a laser beam used to ablate a small tangential hole in, or to thin, the zona pellucida of an embryo for assisted hatching or other assisted reproduction procedures. This guidance describes FDA's recommendations regarding performance characteristics, safety testing, and appropriate labeling.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule codifying the classification of assisted reproduction laser systems into class II (special controls) under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)). This guidance document will serve as the special control for assisted reproduction laser systems. Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification.

Because of the timeframes established by section 513(f)(2) of the act, FDA has determined, under § 10.115(g)(2) (21 CFR 10.115(g)(2)), that it is not feasible to allow for public participation before issuing this guidance. Therefore, FDA is issuing this guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments that are received in response to this notice to determine whether to amend the guidance document.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (§ 10.115). The guidance represents the agency's current thinking on assisted reproduction laser systems. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive ''Class II Special Controls Guidance Document: Assisted Reproduction Laser Systems'' by fax, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the

document number (1539) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information, including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) . The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120) and the quality system regulation (21 CFR part 820, OMB control number 0910–0073). The labeling provisions addressed in the guidance have been approved by OMB under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 16, 2004.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 04–28254 Filed 12–27–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0071]

Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: External Penile Rigidity Devices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Class II Special Controls Guidance Document: External Penile Rigidity Devices.'' This guidance document describes a means by which external penile rigidity devices may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify this device type into class II (special controls) and to exempt it from premarket notification requirements.

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Class II Special Controls Guidance Document: External Penile Rigidity Devices'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Janine Morris, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 17, 2004 (69 FR 12701), FDA announced the availability of a draft of this guidance document and invited interested persons to comment on it by June 15, 2004. FDA received no comments on the proposed guidance and classification rule. The guidance document provides a means by which external penile rigidity devices may comply with the requirement of special controls for class II devices. Following the effective date of the final classification rule, manufacturers will need to address the issues covered in this special control guidance. However, the manufacturer need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

Also in the **Federal Register** of March 17, 2004 (69 FR 12598), FDA proposed to classify external penile rigidity devices into class II with this guidance document as the special control. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify external penile rigidity devices into class II (special controls) and exempt the devices from premarket notification requirements.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on external penile rigidity devices. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive ''Class II Special Controls Guidance Document: External Penile Rigidity Devices'' by fax, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1231) followed by the pound sign (#). Follow the

remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 USC 3501–3520). The quality system regulation provisions addressed in the guidance have been approved by OMB under OMB control number 0910–0773. The labeling provisions addressed in the guidance have been approved by OMB under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 15, 2004.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 04–28255 Filed 12–27–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, RFP SBIR Topic 209—Establishment of Benchmark Data Sets for Radiotherapy Quality Assurance.

Date: February 11, 2005.

Time: 12 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6130 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Kenneth L. Bielat, PhD, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892, (301) 496–7576, *bielatk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: December 20, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–28307 Filed 12–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, RFP SBIR Topic 208—Targetry Systems for Production of Research Radionuclides.

Date: February 7, 2005.

Time: 12 p.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6130 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Kenneth L. Bielat, PhD, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892, (301) 496–7576, *bielatk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: December 20, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–28308 Filed12–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel SBIR Topic 206: Methods of Innovative Pharmaceutical Manufacturing & Quality Assurance.

Date: February 16, 2005.

Time: 12 p.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6130 Executive Blvd., Rockville, MD 20852, (Telephone conference call).

Contact Person: Kenneth L. Bielat, PhD, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892, (301) 496–7576, *bielatk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–28312 Filed 12–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel. RFP SBIR TOPIC 207—Synthesis Modules of Radio Pharmaceutical Production.

Date: February 23, 2005.

Time: 12 p.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6130 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Kenneth L Bielat, PhD, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892, (301) 496–7576, *bielatk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: December 20, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–28314 Filed 12–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Cancer Prevention, Control, Behavioral and Population Sciences Career Development Award (K07) PAR–04–055.

Date: January 27, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Robert Bird, PhD, Scientific Review Administrator, Resources and Training Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., MSC 8328, Room 8113, Bethesda, MD 20892–8328, (301) 496–7978, *birdr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: December 20, 2004

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–28319 Filed 12–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine, Notice of Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM) meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussion could disclose confidential trade secrets or commercial property such a patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the

disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: January 28, 2005.

Closed: 8:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Open: 12:30 p.m. to adjournment.

Agenda: The agenda includes Opening Remarks by Director, NCCAM, NCCAM's second five-year Strategic Plan and other business of the Council.

Place: Neuroscience Conference Center, 6001 Executive Boulevard, Conference Rooms C and D, Rockville, MD 20892.

Contact Person: Jane F. Kinsel, PhD., M.B.A., Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–496–6701.

The public comments session is scheduled from 4:30–5 p.m., but could change depending on the actual time spent on each agenda item. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Jane Kinsel, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland, 20892, 301–496–6701, Fax: 301–480–0087. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5 p.m. on January 20, 2005. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Jane Kinsel at the address listed above up to ten calendar days (February 9, 2005) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by contacting Dr. Jane Kinsel, Executive Secretary, NACCAM, National Institutes of Health, 6707 Democracy Boulevard, Suite 401, Bethesda, Maryland 20892, 301–496–6701, Fax 301–480–0087, or via e-mail at *naccames@mail.nih.gov*.

Dated: December 20, 2004.

Laverne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 04–28309 Filed 12–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of Heart Study Applications.

Date: January 6, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Valerie L. Prenger, PhD, Health Scientist Administrator, Review Branch, Room 7194, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892–7924, (301) 435–0288.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS.)

Dated: December 20, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–28310 Filed 12–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Genetic Pathway to SLE.

Date: January 12, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 3143, Bethesda, MD 20817; (Telephone Conference Call).

Contact Person: Kenneth E. Santora, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616; 301–496–2550; *ks216i@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, SLE Pathogenesis.

Date: January 13, 2005.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 3265, Bethesda, MD 20817; (Telephone Conference Call).

Contact Person: Kenneth E. Santora, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616; 301–496–2550; *ks216i@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS.)

Dated: December 20, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–28306 Filed 12–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Unsolicited P01.

Date: January 18, 2005.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Thomas J. Hiltke, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–2550, *thilke@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS.)

Dated: December 20, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–28313 Filed 12–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Immune Regulation of Autoimmune Diseases.

Date: January 12, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Geetha P. Bansal, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3145, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 402–5658, *gbansal@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS.)

Dated: December 20, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–28315 Filed 11–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group, Interventions Research Review Committee.

Date: February 8–9, 2005.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Initial Review Group, Services Research Review Committee.

Date: February 9–10, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Marina Broitman, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: December 20, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–28317 Filed 12–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: February 3–4, 2005.

Closed: February 3, 2005, 10 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications and the NIMH Intramural Research Programs.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Open: February 3, 2005, 4 p.m. to 5 p.m.

Agenda: Discussion on NIMH program and policy issues.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Open: February 4, 2005, 8:30 a.m. to 12:30 p.m.

Agenda: Presentation of NIMH Director's report and discussion on NIMH program and policy issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6C10, Bethesda, MD 20892.

Contact Person: Jane A. Steinberg, PhD, Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–5047.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. in addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nimh.nih.gov/council/advis.cfm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS.)

Dated: December 20, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–28318 Filed 12–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Health Economics Applications.

Date: January 10, 2005.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Marina Broitman, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, (301) 402–8152, *mbroitma@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Molecular Libraries Screening Centers Network (MLSCN).

Date: January 18–19, 2005.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Yong Yao, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9606, Bethesda, MD 20892–9606, (301) 443–6102, *yyao@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, State Implementation of EBP's II.

Date: January 24, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda North Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Marina Broitman, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental health,NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, (301) 402–8152, *mbroitma@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS.)

Dated: December 20, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–28320 Filed 12–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biomedical Library and Informatics Review Committee.

Date: March 10–11, 2005.

Time: March 10, 2005, 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Second Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Time: March 11, 2005, 8 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, Second Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Hua-Chuan Sim, MD, Health Science Administrator, National Library of Medicine, Extramural Programs, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS.)

Dated: December 20, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–28311 Filed 12–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Cognition and Social Judgment.

Date: January 3, 2005.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Micklin, PhD, Chief, RPHB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS.)

Dated: December 20, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–28316 Filed 12–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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.

Proposed Project: Data Collection Tool for the Decision Support Simulation Pilot Cost-Effective Study—NEW

SAMHSA's Center for Mental Health Services will conduct a pilot study to examine ''cost efficiencies'' in the implementation of Evidence Based Practices (EBPs). This data collection on mental health and substance abuse service utilization and functional level data will be done through the utilization of a computer simulation model developed by Human Services Research Institute.

The survey instrument will be used to collect information on services that should have been received by consumers and services that were actually received. Demographic data and functional level scores will also be collected. The data collection tool is a paper and pencil survey to be completed by case managers or other knowledgeable care givers on current mental health service users.

This data collection tool is aimed at providing information on what combination of EBPs would be most cost effective in a system of care. The goal of this project is consistent with the direction described in The President's New Freedom Commission Report on a wider adoption of EBPs.

ESTIMATES OF ANNUALIZED HOUR BURDEN

Number of respondents	Responses per respondents	Hours per response	Total hour burden
2250	1	.25	562.50

Send comments to Summer King, SAMHSA Reports Clearance Officer, OAS, Room 7–1045, 1 Choke Cherry Road, Rockville, MD 20857. Written comments should be received by February 28, 2005.

Dated: December 20, 2004.

Patricia S. Bransford,

Acting Executive Officer, SAMHSA.

[FR Doc. 04–28249 Filed 12–27–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of 60-day Information collection under review: petitioning requirements for H–1C Nonimmigrant Classification; Form OMB–26.

The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The USCIS has determined that it cannot comply with the normal clearance procedures under this part because normal clearance procedures are likely to prevent or disrupt the collection of information.

If granted, the emergency approval is only valid for 180 days. *All* comments and/or questions pertaining to this pending request for emergency approval *must* be directed to OMB, Office of Information and Regulatory affairs, Attention: Desk Officer, Department of Homeland Security, 725—17th Street, NW., Suite 10235, Washington, DC 20503; 202–3950–5806.

During the first 60 days of this period, a regular review of this information collection is also being undertaken. During the regular review period, the USCIS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until February 28, 2005. During the 60-day regular review, *all* comments and suggestions, or questions regarding the information collection instrument should be directed to Mr. Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–616–7600. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more 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, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies 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 collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Petitioning Requirements for H–1C Nonimmigrant Classification.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* The agency form number is 1615–0065; the file number is OMB–26. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. Public Law 106–95, Section 101(a)(15)(H)(i)(c) of the Immigration and Nationality Act allows petitioning hospitals to import registered nurses to work at those hospitals as nonimmigrants. The information collection is necessary for the USCIS to determine that the eligibility requirements and conditions are met regarding the nurse/beneficiary.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,000 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,000 annual burden hours

Dated: December 21, 2004.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 04–28268 Filed 12–27–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of 60-day information collection under review: biographic information; Form G–325.

Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The USCIS has determined that it cannot comply with the normal clearance procedures under this part because normal clearance procedures are likely to prevent or disrupt the collection of information.

If granted, the emergency approval is only valid for 180 days. *All* comments and/or questions pertaining to this pending request for emergency approval *must* be directed to OMB, Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Homeland Security, 725—17th Street, NW., Suite 10235, Washington, DC 20503; 202–395–5806.

During the first 60 days of this period, a regular review of this information collection is also being undertaken. During the regular review period, the USCIS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until February 28, 2005. During the 60-day regular review, *all* comments and suggestions, or questions regarding the information collection instrument should be directed to Mr. Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–616–7600. Written comments and suggestions from the public and affected

agencies concerning the proposed collection of information should address one or more 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, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies 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 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 response.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Biographic Information.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* The agency form number is G–325. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used to check various agency records on applications or petitions submitted for benefits under the Immigration and Nationality Act. Additionally, this form is required for applications for adjustment to permanent resident status, and may be used, in some cases, for naturalization purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,444,994 responses at 15 minutes (.25) per response.

(6) *An estimate of the total public burden (in house) associated with the collection:* 286,249 annual burden hours.

Dated: December 21, 2004.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 04–28269 Filed 12–27–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of 60-day information collection under review: Request for premium processing service; Form I–907.

The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The USCIS has determined that it cannot comply with the normal clearance procedures under this part because normal clearance procedures are likely to prevent or disrupt the collection of information.

If granted, the emergency approval is only valid for 180 days. *All* comments and/or questions pertaining to this pending request for emergency approval *must* be directed to OMB, Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Homeland Security, 725–17th Street, NW., Suite 10235, Washington, DC 20503; 202–395–5806.

During the first 60 days of this period, a regular review of this information collection is also being undertaken. During the regular review period, the USCIS requests written comments and suggestions from the public and affected agencies concerning this the information collection. Comments are encouraged and will be accepted until February 28, 2005. During the 60-day regular review, *all* comments and suggestions, or questions regarding the information collection instrument should be directed to Mr. Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–616–7600. Written comments and suggestsions from the public and affected agencies concerning the proposed collection of information should address one or more 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, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies 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 collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Request for Premium Processing Service.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* The agency form number is I–907. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. The data collected on this form is used by the Service to process requests for premium processing of certain employment-based petitions or applications in accordance with section 286(u) of the District of Columbia Appropriations Act of 2002.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 80,000 responses at 30 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 40,000 annual burden hours.

Dated: December 21, 2004.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 04–28270 Filed 12–27–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of 60-day information collection under review: petition to remove conditions on residence; Form I–751.

The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The USCIS has determined that it cannot comply with the normal clearance procedures under this part because normal clearance procedures are likely to prevent or disrupt the collection of information.

If granted, the emergency approval is only valid for 180 days. *All* comments and/or questions pertaining to this pending request for emergency approval *must* be directed to OMB, Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Homeland Security, 725–17th Street, NW., Suite 10235, Washington, DC 20503; 202–395–5806.

During the first 60 days of this period, a regular review of this information collection is also being undertaken. During the regular review period, the USCIS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until February 28, 2005. During the 60-day regular review, *all* comments and suggestions, or questions regarding the information collection instrument should be directed to Mr. Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–616–7600. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more 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, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies 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 collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Petition to Remove Conditions on Residence.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* The agency number is 1615–0038; the form number is I–751. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Persons granted conditional residence through marriage to a United States citizen or permanent resident use this form to petition for the removal of those conditions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 118,008 responses at 80 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 156,951 annual burden hours.

Dated: December 21, 2004.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 04–28271 Filed 12–27–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of 60-day information collection under review: application for advance permission to enter as nonimmigrant pursuant to 212(d)(3) of the Immigration and Nationality Act; Form I–192

The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The USCIS has determined that it cannot comply with the normal clearance procedures under this part because normal clearance procedures are likely to prevent or disrupt the collection of information.

If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval *must* be directed to OMB, Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Homeland Security, 725–17th Street, NW., Suite 10235, Washington, DC 20503; 202–395–5806.

During the first 60 days of this period, a regular review of this information collection is also being undertaken. During the regular review period, the USCIS requests written comments and suggestions from the pubic and affected agencies concerning this the information collection. Comments are encouraged and will be accepted until February 28, 2005. During the 60-day regular review, *all* comments and suggestions, or questions regarding the information collection instrument should be directed to Mr. Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Washington, DC, 20529; 202–616–7600. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more 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, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies 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 collection of information on those who are to respond, including through the use of the appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Advance Permission to Enter as Nonimmigrant Pursuant to 212(d)(3) of the Immigration and Nationality Act.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* the agency number is 1615–0017; the form number if I–192. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households. The information furnished on Form I–192 will be used by the USCIS to determine if the applicant is eligible to enter the U.S. temporarily under the provisions of section 212(d)(3) of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,000 responses at 15 (.25) minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,000 annual burden hours.

Dated: December 21, 2004.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 04–28272 Filed 12–27–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of 60-day information collection under review: Request for cancellation of public charge bond; Form I–356.

The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The USCIS has determined that it cannot comply with the normal clearance procedures under this part because normal clearance procedures are likely to prevent or disrupt the collection of information.

If granted, the emergency approval is only valid for 180 days. All comments and/or questions pertaining to this pending request for emergency approval *must* be directed to OMB, Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Homeland Security, 725—17th Street, NW., Suite 10235, Washington, DC 20503; 202–395–5806.

During the first 60 days of this period, a regular review of this information collection is also being undertaken. During the regular review period, the USCIS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until February 28, 2005. During the 60-day regular review, *all* comments and suggestions, or questions regarding the information collection instrument should be directed to Mr. Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–616–7600. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more 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, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies 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 collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Request for Cancellation of Public Charge Bond.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* The agency form number is I–356. U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: Individuals or Households. This form is used by the USCIS to determine if the bond posted on behalf of an alien in the United States should be canceled.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,000 responses at 15 minutes (.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 500 annual burden hours.

Dated: December 22, 2004.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 04–28300 Filed 12–27–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2273–03]

Direct Mail Program for Submitting Form I–485, Application To Register Permanent Resident or Adjust Status; Form I–765, Application for Employment Authorization; and Form I–131, Application for Travel Document; Correction

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice of correction.

SUMMARY: U.S. Citizenship and Immigration Services (USCIS) is correcting a notice that was published in the **Federal Register** on November 19, 2004, at 69 FR 67751 which announced the expansion of the Direct Mail Program to provide that certain filings of Forms I–485, I–765, and I–131, be filed at a designated Chicago, Illinois lockbox facility for initial processing. In the supplementary information to the notice, USCIS inadvertently advised aliens applying for adjustment of status as special immigrants under section 101(a)(27)(I) of the Immigration and Nationality Act (Act) (*i.e.* certain officers and employees of international organizations and their eligible family members) to submit their Form I–485 to the lockbox facility. Accordingly, USCIS is issuing this correction to remove this category of aliens from the listing. In addition, the notice directed all aliens applying for work authorization through a grant of deferred action (8 CFR 274a.12(c)(14)) to submit their Forms I–765 to the Chicago lockbox facility. The adjudications for Forms I–765 filed by aliens who have been granted deferred action based upon (1) an approved Form I–360 (as a battered spouse or child of a U.S. citizen or lawful permanent resident), (2) a pending bona fide application for T nonimmigrant status (Form I–914), or (3) U nonimmigrant status interim relief were centralized at the Vermont Service Center. Accordingly, the notice is being corrected to exempt those three classes of aliens from filing their Forms I–765 with the Chicago lockbox facility.

DATES: This correction is effective December 28, 2004.

FOR FURTHER INFORMATION CONTACT: S. Rebecca Watson, Lockbox Project Manager, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Room 1000, Washington, DC 20529, Telephone (202) 272–1001.

SUPPLEMENTARY INFORMATION:

Notice for Correction

As published in the **Federal Register** on November 19, 2004 (69 FR 67751), the notice contains two errors that are in need of correction.

Correction of Publication

Accordingly, the publication on November 19, 2004 (69 FR 67751), of the notice that was the subject of FR Doc. 04–25679 is corrected as follows:

1. On page 67752, in the first column, in the eighth bullet, the reference to ''Aliens described as special immigrants under sections 101(a)(27)(J), (K), and (I) of the Act'' is corrected to read: ''Aliens described as special immigrants under sections 101(a)(27)(J) and (K), of the Act''

2. On page 67752, in the middle column, in the fifth bullet, the reference to ''(c)(14)—Aliens granted deferred action;'' is corrected to read: ''(c)(14)—Aliens granted deferred action, except those aliens who have been granted deferred action based upon (1) an approved Form I–360 (as a battered spouse or child of a U.S. citizen or lawful permanent resident), (2) a pending bona fide application for T nonimmigrant status, or (3) U nonimmigrant status interim relief;''

Dated: December 22, 2004.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 04–28299 Filed 12–27–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4909–N–12]

Notice of Proposed Information Collection for Public Comment: The Voucher Homeownership Survey

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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.

DATES: February 28, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Marina L. Myhre, (202) 708–3700, extension 5705 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected 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: Voucher Homeownership Survey.

Description of the need for the information and proposed use: This request is for the clearance of a survey instrument designed to provide a broad, statistically accurate picture of the program and how it operates nationwide. This survey would be based on a sample of 350 PHAs that have implemented the Voucher Homeownership Program. The purpose of the survey is to: (1) Provide an accurate, but general, picture of the program's implementation nationwide and (2) help the Department identify the operational characteristics that contribute to the success of a voucher homeownership program and use the resulting detailed analysis of those operational characteristics to further improve the program.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and

hours of response: 350 PHAs will be surveyed. Average time to complete the survey is 60 minutes. Respondents will only be contacted once. Total burden hours are 350.

Status of the proposed information collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: December 20, 2004

Dennis C. Shea,

Assistant Secretary for Policy Development and Research.

[FR Doc. 04–28281 Filed 12–27–04; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903-N–104]

Notice of Submission of Proposed Information Collection to OMB; Tribal Colleges and Universities Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD is requesting approval to continue to collect this information which to facilitates the Tribal Colleges and Universities Program grants application and grants management. Grants assist Tribal Colleges and Universities to build, expand, renovate, and equip their own facilities.

DATES: *Comments Due Date:* January 27, 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 (2528–0215) 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: Tribal Colleges and Universities Program.

OMB Approval Number: 2528–0215.

Form Numbers: SF–424, SF–424 Supplement, HUD–424CB, SFLLL, HUD–27300, HUD–2880, HUD–2994, HUD–32004 and HUD–96010, HUD–96010–1.

Description of the Need for the Information and Its Proposed Use: HUD is request approval to continue to collect this information facilitate the Tribal Colleges and Universities Program grants application and grants management. Grants assist Tribal Colleges and Universities to build, expand, renovate, and equip their own facilities.

Frequency of Submission: On occasion, Quarterly.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden:	24	4.33	×	21.92	=	2,280.

Total Estimated Burden Hours: 2,280.

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: December 17, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E4–3828 Filed 12–27–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Department of Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

DATES: Friday, January 14, 2005, time 1:30 p.m. to 4 p.m.

ADDRESSES: Two Rivers Chamber Office, 1 South Third Street, 9th Floor, Easton, PA 18042.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Public Law 100–692, November 18,

1988, and extended through Public Law 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 1 South Third Street, 8th Floor, Easton, PA 18042, (610) 923–3548.

Dated: December 21, 2004.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 04–28379 Filed 12–27–04; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Trustee Council; Notice of Meeting

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the Exxon Valdez Oil Spill Public Advisory Committee.

DATES: January 27, 2005, at 9 a.m.

ADDRESSES: Hilton Anchorage, 500 West 3rd Avenue, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska, 99501, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Committee was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The meeting agenda will feature an orientation for new Committee members and discussions about the Trustee Council's proposed invitation to bid on projects for fiscal year 2006.

Dated: December 21, 2004.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 04–28279 Filed 12–27–04; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Recovery Plan for *Deinandra conjugens* (Otay tarplant)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (we) announces the availability of the Recovery Plan for *Deinandra* [= *Hemizonia*] *conjugens* (Otay tarplant). This plant species is found in southwestern San Diego County, California, and northwestern Baja California, Mexico.

ADDRESSES: Printed copies of this recovery plan are available by request from the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92009 (telephone: 760–431–9440). An electronic copy of the recovery plan is available on the World Wide Web at: *http://endangered.fws.gov/recovery/index.html#plans.*

FOR FURTHER INFORMATION CONTACT: Field Supervisor, at the above Carlsbad address.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*) and our endangered species program. Recovery means improvement of the status of listed species to the point at which listing is no longer required under the criteria set out in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The ESA requires the development of a recovery plan for endangered or threatened species unless such a plan would not promote the conservation of the species. Section 4(f) of the ESA requires that public notice, and an opportunity for public review and comment, be provided during recovery plan development. The Draft Recovery Plan for *Deinandra conjugens* was available for public comment from December 18, 2003, to March 2, 2004 (68 FR 70526). Information presented during the public comment period has been considered in the preparation of this final recovery plan.

We listed *Deinandra conjugens* as a federally threatened species on October 13, 1998 (63 FR 54938); we designated critical habitat on December 10, 2002 (67 FR 76030). *Deinandra conjugens* is annual plant typically found on clay soils in grasslands, open coastal sage scrub, and maritime succulent scrub. It is restricted to southwestern San Diego County, California, and northwestern Baja California, Mexico; its status in Mexico is unclear.

Urban development and agricultural activities, invasion of nonnative species, and habitat fragmentation and degradation have resulted in the loss of suitable habitat across the *Deinandra conjugens'* range. The species annual habit and self-incompatible breeding system potentially create additional threats from population fluctuations, reduced populations of pollinators, and a decline in genetic variation. Maintenance of the genetic variability within the species, through cross-pollination, may be critical to long-term survival. The extensive fragmentation of remaining populations may exacerbate these threats by reducing connectivity between populations and potentially limiting suitable pollinators, and hence gene flow between populations. *Deinandra conjugens* is a species that receives benefit from multi-species preservation and management under the Multiple Species Conservation Program, a regional habitat conservation program in southwestern San Diego County, California.

The objective of this plan is to provide a framework for the recovery of *Deinandra conjugens* so that protection by the ESA is no longer necessary. Actions necessary to accomplish this objective include: (1) Stabilize and protect habitat supporting known populations; (2) assess the status of all known populations; (3) conduct surveys to search for new populations and implement actions to protect populations outside of established reserves when necessary; (4) adaptively manage and monitor conserved areas; (5) identify research needs and conduct studies on the biology and ecology of *Deinandra conjugens;* and (6) develop and implement a community outreach program.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 3, 2004.

Steve Thompson,

Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. 04–28380 Filed 12–27–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Scientific Earthquake Studies Advisory Committee

AGENCY: U.S. Geological Survey.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 106–503, the Scientific Earthquake Studies Advisory Committee (SESAC) will hold its ninth meeting. The meeting location is the U.S. Geological Survey, John Wesley Powell National Center, Rm. 3B457, 12201 Sunrise Valley Drive, Reston, Virginia 20192. The Committee is comprised of members from academia, industry, and State government. The Committee shall advise the Director of the U.S. Geological Survey (USGS) on matters relating to the USGS's participation in the National Earthquake Hazards Reduction Program.

The Committee will review the overall direction of the U.S. Geological Survey's Earthquake Hazards Program in the current and next fiscal years. They will also discuss the reauthorization of the National Earthquake Hazards Reduction Program.

Meetings of the Scientific Earthquake Studies Advisory Committee are open to the public.

DATES: January 11, 2005, commencing at 9 a.m. and adjourning at 5 p.m. on January 12, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. David Applegate, U.S. Geological Survey, MS 905, 12201 Sunrise Valley Drive, Reston, Virginia 20192, (703) 648–6714.

Dated: December 17, 2004.

James F. Devine,

Senior Advisor for Science Applications.

[FR Doc. 04–28244 Filed 12–27–04; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AR–910–0777–XP–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting notice.

SUMMARY: This notice announces a meeting and tour of the Arizona Resource Advisory Council (RAC).

The business meeting will be held on January 25, 2005, at the Bureau of Land Management National Training Center located at 9828 North 31st Avenue, Phoenix, Arizona. It will begin at 9 a.m. and conclude at 4 p.m. The agenda items to be covered include: Review of the October 27, 2004, Meeting Minutes; BLM State Director's Update on Statewide Issues; RAC Orientation on BLM Programs and Arizona BLM Priorities, Presentations on Transportation and Rights-of-Way, and Collecting and Interpreting Rangeland Health Monitoring Data; Arizona Land Use Planning Updates; RAC Questions on Written Reports from BLM Field Managers; Field Office Rangeland Resource Team Proposals; Reports by the Standards and Guidelines, Recreation, Off-Highway Vehicle Use, Public Relations, Land Use Planning and Tenure, and Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion of future meetings. A public comment period will be provided at 11:30 a.m. on January 25, 2005, for any interested publics who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Elaine Y. Zielinski,

Arizona State Director.

[FR Doc. 04–28381 Filed 12–27–04; 8:45 am]

BILLING CODE 4130–32–M

DEPARTMENT OF THE INTERIOR

National Park Service

Plan of Operations, Environmental Assessment, and Draft Floodplains and Wetlands Statements of Findings, Big Thicket National Preserve, TX; Correction

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availability; correction.

SUMMARY: The National Park Service (NPS) published a Notice of Availability on November 24, 2004 in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations, Part 9, Subpart B, of a Plan of Operations submitted by Sanchez Oil and Gas Corporation for drilling and production of the WM Rice #1 Well from a surface location north of County Road 4825 within Big Thicket National Preserve, Tyler County, Texas. The notice also announced the availability of an accompanying Environmental Assessment and draft Floodplain and Wetland Statements of Findings. These documents are not, in fact, yet ready for review. When they are available, another notice will be published.

FOR FURTHER INFORMATION CONTACT: Mr. Dusty Pate, Range Technician, Big Thicket National Preserve, 3785 Milam Street, Beaumont, Texas 77701, Telephone: 409 839–2689 ext. 232, e-mail at *Haigler_Pate@nps.gov*.

Dated: November 30, 2004.

Stephen P. Martin,

Director, Intermountain Region, National Park Service.

[FR Doc. 04–28295 Filed 12–27–04; 8:45 am]

BILLING CODE 4312–CB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Plan of Operations, Environmental Assessment, Big Thicket National Preserve, Texas

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of a Plan of Operations and Environmental Assessment for a 30-day public review at Big Thicket National Preserve.

SUMMARY: Notice is hereby given in accordance with section 9.52(b) of Title 36 of the Code of Federal Regulations, Part 9, Subpart B, that the National Park Service (NPS) has received from Famcor Oil Inc., a Plan of Operations to directionally drill the Roberts/Duke #1 flowline beneath the Menard Creek Corridor Unit of Big Thicket National Preserve, within Liberty and Polk Counties, Texas. The NPS has prepared an Environmental Assessment on this proposal.

DATES: The above documents are available for public review and comment through January 27, 2005.

ADDRESSES: The Plan of Operations and Environmental Assessment are available for public review and comment in the Office of the Superintendent, Art Hutchinson, Big Thicket National Preserve, 3785 Milam Street, Beaumont, Texas 77701. Copies of the Plan of Operations are available, for a duplication fee; and copies of the Environmental Assessment are available upon request, and at no cost, from the Superintendent, Art Hutchinson, Big

Thicket National Preserve, 3785 Milam Street, Beaumont, Texas 77701.

FOR FURTHER INFORMATION CONTACT: Mr. Dusty Pate, Range Technician, Big Thicket National Preserve, 3785 Milam Street, Beaumont, Texas 77701, Telephone: 409 839–2689 ext. 232, e-mail at *Haigler_Pate@nps.gov.*

SUPPLEMENTARY INFORMATION: If you wish to submit comments on these documents within the 30 days; mail them to the street address provided above, hand-deliver them to the park at the street address provided above, or electronically file them to the e-mail address provided above. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

Dated: October 25, 2004.

John T. Crowley,

Acting Regional Director, Intermountain Region, National Park Service.

[FR Doc. 04–28296 Filed 12–27–04; 8:45 am]

BILLING CODE 4312–CB–M

DEPARTMENT OF THE INTERIOR

National Park Service

Draft General Management Plan and Environmental Impact Statement for the First Ladies National Historic Site, Ohio

AGENCY: National Park Service.

ACTION: Notice of availability of the draft general management plan and draft environmental impact statement for the First Ladies' National Historic Site, Ohio.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the draft general management plan and environmental impact statement (GMP/EIS) for the First Ladies' National Historic Site (FILA).

DATES: The draft GMP/EIS will remain available for public review for 60 days following the publishing of the notice of availability in the **Federal Register** by the Environmental Protection Agency. Public meetings will be announced in the local media.

ADDRESSES: Copies of the GMP/EIS are available by request by writing to the First Ladies National Historic Site, c/o Site Manager, 8095 Mentor Avenue, Mentor, Ohio 44060, by telephoning 440–974–2993 or by e-mail to *carol_j_spears@nps.gov.* The document is also available to be picked up in person at the First Ladies National Historic Site, 331 Market Avenue South, Canton, Ohio 44702. The document can be found on the Internet in the NPS Planning Web site at: *http://planning.nps.gov/plans.cfm.*

FOR FURTHER INFORMATION CONTACT: Ms. Carol J. Spears, Site Manager, 8095 Mentor Avenue, Mentor, Ohio 44060, telephone 440–974–2993, or Sharon Miles, Job Captain, Midwest Regional Office, 601 Riverfront Drive, Omaha, NE 68102–4226, telephone 402–661–1850.

SUPPLEMENTARY INFORMATION: The FILA is owned by the NPS and operated by the National First Ladies' Library. The park encompasses the Ida Saxton McKinley House. The Education and Resource Center (formerly the City National Bank Building) is owned and operated by the National First Ladies' Library, and is part of the visitor experience at the park. The park was established to preserve and interpret the role and history of FILA.

The purpose of the general management plan is to set forth the basic management philosophy for the park and to provide strategies for addressing issues and achieving identified management objectives. The GMP/EIS describes and analyzes the environmental impacts of the proposed action and two other action alternatives for the future management direction of the park. A no-action alternative is also evaluated.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may also be circumstances where we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: November 4, 2004.

Ernest Quintana,

Regional Director, Midwest Region.

[FR Doc. 04–28288 Filed 12–27–04; 8:45 am]

BILLING CODE 4312–86–P

DEPARTMENT OF THE INTERIOR

National Park Service

AGENCY: National Park Service.

ACTION: Notice of availability of the draft wilderness and backcountry management plan/draft environmental impact statement, Isle Royale National Park, Michigan.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of a draft wilderness and backcountry management plan/environmental impact statement (WBMP EIS) for Isle Royale National Park (ISRO), Michigan.

DATES: There will be a 60-day public review period for comments on this document. Comments on the draft WBMP EIS must be received no later than 60 days after the Environmental Protection Agency publishes its notice of availability in the **Federal Register**.

ADDRESSES: Copies of the draft WBMP EIS or a summary document are available by request by writing to Phyllis Green, Superintendent, Attn: WBMP, Isle Royale National Park, 800 East Lakeshore Drive, Houghton, Michigan 49931, or by e-mail message at *isro_wbmp@nps.gov.* The document can be picked up at the park's headquarters at the same address, or viewed over the Internet at the park's Web site at *http://www.nps.gov/isro/home.htm.* Copies of the draft or summary document will be sent to over 500 interested parties, as well as to public libraries throughout Michigan, Minnesota, and Wisconsin.

FOR FURTHER INFORMATION CONTACT: Jean Battle, Chief of Resource Management, Isle Royale National Park, 800 East Lakeshore Drive, Houghton, Michigan 49931, 906–487–9080 extension 34 or *jean_battle@nps.gov.*

SUPPLEMENTARY INFORMATION: The NPS management policies require the superintendent of each park containing wilderness resources will develop and maintain a wilderness management plan to guide the preservation, management, and use of these resources. The IRSO's

wilderness was designated in 1976, and the park does not have an approved wilderness management plan. The purpose of this draft WBMP EIS is to satisfy that requirement and bring ISRO into compliance with NPS policies. This draft WBMP EIS does not propose any changes in wilderness boundaries within ISRO, but it does propose formalizing and implementing some changes in how that wilderness is managed. The draft plan proposes several alternatives for management actions that would achieve the goals of wilderness management in the park consistent with The Wilderness Act and NPS policies. The primary issues being addressed in the plan that may result in management changes include: managing permitting for overnight camping and boating in the park, managing organized day tours in the park, managing campfires, the maintenance or removal of fire towers, the maintenance or removal of picnic tables in wilderness campgrounds, the use of treated lumber for trail maintenance, and the application of the minimum tool decision tree to determining the appropriate tools for maintenance, research, and other management practices within the park's wilderness.

Persons wishing to comment may do so by any one of several methods. They may mail comments to the Superintendent, Attn: WBMP, Isle Royale National Park, 800 East Lakeshore Drive, Houghton, Michigan 49931, or call the Chief of Resource Management at 906–487–9080 extension 34. They may comment via e-mail to *isro_wbmp@nps.gov* (include name and return address in the e-mail message). Finally, they may hand-deliver comments to park headquarters at 800 East Lakeshore Drive, Houghton, Michigan.

The NPS practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments.

We will make all submissions from organizations or businesses, and from individuals identify themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: November 5, 2004.

Ernest Quintana,

Regional Director, Midwest Region.

[FR Doc. 04–28287 Filed 12–27–04; 8:45 am]

BILLING CODE 4312–92–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement/ Fire Management Plan Point Reyes National Seashore Marin County, CA; Notice of Approval of Record of Decision

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Public Law 91–190, as amended) and the implementing regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service has prepared, and the Regional Director, Pacific West Region has approved, the Record of Decision for the updated Fire Management Plan for Point Reyes National Seashore. The formal no-action period was officially initiated September 10, 2004, with the U.S. Environmental Protection Agency's **Federal Register** notification of the filing of the Final Environmental Impact Statement (EIS).

Decision: As soon as practicable the park will begin to implement as its updated Fire Management Plan the ''Increase Natural Resource Enhancement and Expand Hazardous Fuel Reduction'' alternative contained in the Draft and Final EIS (also described and analyzed as the Alternative C). The selected plan features a long-term, coordinated strategy to restore native plant cover, reduce infestations of invasive non-native plants, increase abundance of federally listed species, and protect or enhance cultural resources and historic scenes. Use of prescribed fire or mechanical treatments on up to 3,500 acres could be undertaken, so as to protect high priority areas having hazardous fuels (any actions deemed essential to occur within Wilderness would be executed only after first determining the ''minimum tool'' appropriate to accomplish the necessary work). As documented through the EIS process, this plan was also deemed to be the ''environmentally preferred'' alternative.

This course of action and two alternatives were identified and analyzed in the Final EIS, and previously in the Draft EIS (the latter was distributed in spring, 2004). The full spectrum of foreseeable environmental consequences was assessed, and appropriate mitigation measures identified, for each alternative. Beginning with early scoping, through the preparation of the Draft and Final EIS, several public meetings and numerous interagency reviews were conducted, and newsletter updates were regularly provided (only seven written comments responding to the Draft EIS were received, with minor points raised). Key consultations which aided in preparing the Draft and Final EIS involved (but were not limited to) the U.S. Fish and Wildlife Service, National Marine Fisheries Service, California Department of Fish and Game, State Historic Preservation Office, native American Tribes, regional air quality management districts, and adjoining land managing agencies. Local communities, county and city officials, and interested organizations were contacted extensively during initial scoping and throughout the fire planning process.

Copies: Interested parties desiring to review the Record of Decision may obtain a complete copy by contacting the Superintendent, Point Reyes National Seashore, Point Reyes, CA 94956; or via telephone request at (415) 464–5100.

Dated: October 29, 2004.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 04–28293 Filed 12–27–04; 8:45 am]

BILLING CODE 4312–FW–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Final Environmental Impact Statement, Rio Grande Wild and Scenic River, Texas

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the Final Environmental Impact Statement for the General Management Plan, Rio Grande Wild and Scenic River.

SUMMARY: The National Park Service announces the availability of the Final Environmental Impact Statement for the General Management Plan for Rio Grande Wild and Scenic River, Texas. This is being done pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(C).

DATES: The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of the notice of

availability of the Final Environmental Impact Statement.

ADDRESSES: Copies of the General Management Plan and Environmental Impact Statement are available from the Superintendent, John King, Rio Grande Wild and Scenic River, P.O. Box 129, Big Bend National Park, TX 79834–0129, (432) 477–1101. Public reading copies of the document will be available at the following locations:

Office of the Superintendent, Rio Grande Wild and Scenic River, c/o Big Bend National Park, 1 Headquarters Dr., Big Bend National Park, TX 79834.

NPS Intermountain Support Office, Planning and Environmental Quality, 12795 W. Alameda Parkway, Lakewood, CO 80228, Telephone: (303) 987–6671.

FOR FURTHER INFORMATION CONTACT: Lou Good, Management Assistant, Rio Grande Wild and Scenic River, P.O. Box 129, Big Bend National Park, TX 79834–0129, 432–477–1103.

Dated: November 3, 2004.

Steven P. Martin,

Director, Intermountain Region, National Park Service.

[FR Doc. 04–28294 Filed 12–27–04; 8:45 am]

BILLING CODE 4310–KF–P

DEPARTMENT OF THE INTERIOR

National Park Service

Decision Notice and Finding of No Significant Impact (FONSI) for the Proposal To Improve the Arlington County, VA Potomac Interceptor Sewer System

AGENCY: National Park Service, Interior.

ACTION: Availability of the Decision Notice and FONSI for the proposal to improve the Arlington County, Virginia Potomac Interceptor Sewer System.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service (NPS) policy, the NPS announces the availability of the Decision Notice and FONSI for the Improvements to the Arlington County, Virginia Potomac Interceptor Sewer System. The Decision Notice and FONSI identify Alternative A as selected by the NPS for action. It is the preferred and environmentally preferred alternative in the Environmental Assessment. Under this alternative, improvements will be made to the existing sewer system which will minimize impacts to the environment and the community by providing additional sewer capacity to eliminate sewer overflows, back-ups and surcharging, to address the aging elements of the system, while maintaining continuous service to existing users, to provide available capacity for future users, and implement a cost-effective project that minimizes capital and operating costs.

DATES: The Environmental Assessment, upon which the decision and FONSI were made, was available for public comment for 30 days in June—July 2003. Three responses were received in favor of the preferred alternative.

ADDRESSES: The Decision Notice and FONSI will be available for public inspection Monday through Friday, 8 a.m. through 4 p.m. at the GWMP Headquarters, Turkey Run Park, McLean, Virginia. The FONSI can also be viewed on the GWMP Web site at *http://www.nps.gov/gwmp.*

SUPPLEMENTARY INFORMATION: The Decision Notice and FONSI completes the Environmental Assessment process.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah Koenen (703) 289–2540.

Dated: October 18, 2004.

Audrey F. Calhoun,

Superintendent, George Washington Memorial Parkway.

[FR Doc. 04–28292 Filed 12–27–04; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Statements; Record of Decision: Pictured Rocks National Lakeshore, MI

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of a Record of Decision on the Final Environmental Impact Statement for the General Management Plan/Wilderness Study, Pictured Rocks National Lakeshore.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91–190, 83 Stat. 852, 853, as codified as amended at 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of the Record of Decision (ROD) for the General Management Plan/Wilderness Study (GMP/WS), Pictured Rocks National Lakeshore (PIRO), Michigan. The Midwest Regional Director has approved the ROD for the GMP/WS. Specifically, the NPS has selected the preferred alternative as described in the Final General Management/Wilderness Study/Environmental Impact Statement (FGMP/WS/EIS). Under the selected action, the NPS will provide additional and more convenient access to significant national lakeshore features, thus expanding opportunities for visitor use in the national lakeshore. Natural ecological processes will be allowed to occur, and restoration programs will be initiated where necessary. Federal lands in the Beaver Basin area in the national lakeshore (about 16 percent of the lakeshore) will be proposed for designation as wilderness. Vehicular access to Little Beaver Lake campground will remain, however structures within the proposed wilderness will be removed. Other roads in Beaver Basin will be closed and converted to trails or allowed to revert to natural vegetation. To accommodate possible increased use and to increase ease of access in the portion of the national lakeshore not proposed for wilderness, certain roads will be upgraded (upgrading portions of County Road H–58 will be recommended), and a drive-in campground in the Miners area and a boat-in campsite on Grand Sable Lake will be added. Operational facilities will be consolidated at the ends of the national lakeshore for efficiency. The selected action and four other alternatives were analyzed in the draft and final EIS. The full range of foreseeable environmental consequences was assessed.

Among the alternatives the NPS considered, the selected action best protects PIRO's natural and cultural resources, and its core wilderness resource, while also providing a range of quality recreational and educational experiences. It also meets NPS goals for managing the lakeshore, and meets national environmental policy goals. The preferred alternative will not result in the impairment of resources and values.

The ROD includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, the rationale for why the selected action is the environmentally preferred alternative, a finding of no impairment of park resources and values, and an overview of public involvement in the decision-making process.

FOR FURTHER INFORMATION CONTACT: Karen Gustin, Superintendent, Pictured Rocks National Lakeshore, P.O. Box 40, N8391 Sand Point Rd., Munising, MI 49862–0040, or by calling 906–387–2607. The official responsible for this decision is Ernest Quintana, the Regional Director, Midwest Region.

SUPPLEMENTARY INFORMATION: Copies of the ROD may be obtained from the contact listed above or may be viewed

online at *http://www.nps.gov/piro.htm.* With the concurrence of the NPS Director, the wilderness proposal will be sent to the Assistant Secretary for Fish, Wildlife and Parks and the Secretary of the Interior, who may revise or approve the proposal. The Secretary may then forward a wilderness recommendation to the President, who in turn may approve or revise the recommendation and then transmit the recommendation to Congress for consideration.

Approved: November 23, 2004.

Ernest Quintana,

Regional Director.

[FR Doc. 04–28297 Filed 12–27–04; 8:45 am]

BILLING CODE 4310–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Acadia National Park, Bar Harbor, ME; Acadia National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770, 5 U.S.C. App. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, February 7, 2005.

The Commission was established pursuant to Public Law 99–420, Sec. 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at park Headquarters, McFarland Hill, Bar Harbor, Maine, at 1 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held September 13, 2004.
2. Committee reports:

—Land Conservation.
—Park Use.
—Science.
—Historic.

3. Old business.
4. Superintendent's report.
5. Public comments.
6. Proposed agenda for next Commission meeting, June 6, 2005.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288–3338.

Dated: December 1, 2004.

Sheridan Steele,

Superintendent.

[FR Doc. 04–28290 Filed 12–27–04; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Chesapeake and Ohio Canal National Historical Park Advisory Commission; Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service, Chesapeake and Ohio Canal National Historical Park Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the Chesapeake and Ohio Canal National Historical Park Advisory Commission (the Commission) will be held on Friday, January 21, 2005, at park headquarters, 1850 Dual Highway, Hagerstown, Maryland. The meeting will begin at 10 a.m.

Items on the agenda include planning initiatives, construction and development projects, and park operational issues.

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Superintendent Kevin Brandt at (301) 714–2201.

DATES: January 21, 2005, at 10 a.m.

ADDRESSES: 1850 Dual Highway, Hagerstown, Maryland 21740.

FOR FURTHER INFORMATION CONTACT: Superintendent Kevin Brandt, (301) 714–2201.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

Members of the Commission are: Mrs. Sheila Rabb Weidenfeld, Chairman, Mr. Charles J. Weir, Mr. Barry A. Passett, Mr. Terry W. Hepburn, Ms. JoAnn M. Spevacek, Mrs. Mary E. Woodward, Mrs. Donna Printz, Mrs. Ferial S. Bishop, Ms. Nancy C. Long, Mrs. Jo Reynolds, Dr. James H. Gilford, Brother James Kirkpatrick.

Dated: November 23, 2004.

Kevin D. Brandt,

Superintendent, Chesapeake and Ohio Canal National Historical Park.

[FR Doc. 04–28291 Filed 12–27–04; 8:45 am]

BILLING CODE 4310–52–M

DEPARTMENT OF THE INTERIOR

National Advisory Commission

Flight 93 National Memorial Advisory Commission

AGENCY: National Park Service.

ACTION: Notice of January 15, 2005, meeting.

SUMMARY: This notice sets forth the date of the January 15, 2005, meeting of the Flight 93 Advisory Commission.

DATES: The public meeting of the Advisory Commission will be held on Saturday, January 15, 2005, from 1 p.m. to 4 p.m. Additionally, the Commission will attend the Flight 93 Memorial Task Force meeting the same day from 8 a.m. to 11 a.m., which is also open to the public.

Location: The Commission meeting will be held at the Somerset County Courthouse, Courtroom #1; 2nd floor; 111 East Union Street, Somerset, Pennsylvania, 15501. The Flight 93 Memorial Task Force meeting will be held in the same location.

Agenda

The January 15, 2005 Commission meeting will consist of:

(1) Opening of meeting and pledge of allegiance.

(2) Review and approval of minutes from May 14, 2004.

(3) Reports from the Flight 93 Memorial Task Force and the National Park Service. Comments from the public will be received after each report.

(4) Old business.

(5) New business.

(6) Closing remarks.

FOR FURTHER INFORMATION CONTACT: Joanne M. Hanley, Superintendent, Flight 93 National Memorial, 109 West Main Street, Somerset, PA 15501, 814.443.4557.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Flight 93

Advisory Commission, 109 West Main Street, Somerset, PA 15501.

Dated: November 30, 2004.

Joanne M. Hanley,

Superintendent, Flight 93 National Memorial.

[FR Doc. 04–28289 Filed 12–27–04; 8:45 am]

BILLING CODE 4310–WH–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–437 and 731–TA–1060 and 1061 (Final)]

Carbazole Violet Pigment 23 From China and India

Determination

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China and India of carbazole violet pigment 23, provided for in subheading 3204.17.90 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be subsidized by the Government of India and to be sold in the United States at less than fair value (LTFV).[2]

Background

The Commission instituted these investigations effective November 21, 2003, following receipt of a petition filed with the Commission and Commerce by Nation Ford Chemical Co., Fort Mill, SC, and Sun Chemical Corp., Cincinnati, OH. The final phase of these investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of carbazole violet pigment 23 from India were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and that imports of carbazole violet pigment 23 from China and India were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 23, 2004 (69 FR 44059). The hearing was held in Washington, DC, on November 10, 2004, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on December 22, 2004. The views of the Commission are contained in USITC Publication 3744 (December 2004), entitled *Carbazole Violet Pigment 23 from China and India: Investigations Nos. 701–TA–437 and 731–TA–1060 and 1061 (Final).*

By order of the Commission.

Issued: December 21, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–28340 Filed 12–27–04; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The Commission further determines that critical circumstances do not exist with respect to those imports of the subject merchandise from China that were subject to the affirmative critical circumstances determination by the Department of Commerce.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–406 (Consolidated Advisory Opinion and Enforcement Proceedings)]

In the Matter of Certain Lens-Fitted Film Packages; Order

On October 7, 2004, the United States Court of Appeals for the Federal Circuit issued two decisions in appeals stemming from the above-captioned proceedings, *VastFame Camera, Ltd., et al.* v. *U.S. Int'l Trade Com'n,* 386 F.3d 1108 (Fed. Cir. 2004) (''*VastFame*'') and *Fuji Photo Film Co., Ltd., et al.* v. *U.S. Int'l Trade Com'n,* 386 F.3d 1095 (Fed. Cir. 2004) (''*Fuji*''). The mandates issued in these cases on November 29, 2004. In *VastFame,* the Court reversed the Commission's decision to refuse to allow an importer who had not been a respondent in the original investigation to raise the defense of patent invalidity in the Commission's enforcement proceedings, vacated the enforcement decision, and remanded the case for proceedings consistent with its Opinion. In *Fuji*, the Court affirmed the majority of the Commission's determinations at issue, but vacated and remanded the Commission's infringement decision as to one asserted claim for redetermination of the infringement issue using a claim construction supplied by the Court.

It is hereby ordered that:

1. This investigation be remanded to Administrative Law Judge Paul J. Luckern in order that he may conduct such further proceedings as may be necessary to carry out the mandates of the Court and conclude the proceedings.

2. The presiding administrative law judge shall issue an initial determination in which he shall determine:

a. Whether claim 15 of U.S. Patent No. 4,884,087 is invalid;

b. Whether any of the respondents' accused disposable cameras imported into or sold in the United States infringe claim 1 of U.S. Patent No. 4,972,649 under the Federal Circuit's claim construction; and

c. Whether there are, in light of the determinations made in accordance with paragraph b. above, any further violations of section 337 of the Tariff Act of 1930.

3. The presiding administrative law judge may, in his discretion, reopen the evidentiary record to the extent necessary to resolve any new factual questions presented by the Court's opinion. His ID will be processed by the Commission in accordance with Commission Rules 210.42(h)(2) and 210.43–210.45, 19 CFR 210.42(h)(2) and 210.43–210.45.

4. In the event that the presiding administrative law judge determines that there have been additional violations of section 337 of the Tariff Act of 1930, he shall issue a recommended determination on whether any further enforcement measures are necessary.

By order of the Commission.

Issued: December 21, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–28339 Filed 12–27–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–500]

In the Matter of Certain Purple Protective Gloves; Notice of Issuance of General Exclusion Order and Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to issue a general exclusion order in the above-captioned investigation and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3095. Copies of nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may 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.* Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: This trademark-based section 337 investigation was instituted by the Commission based on a complaint filed by Kimberly-Clark Corporation of Irving, Texas and Safeskin Corporation of Roswell, Georgia (collectively ''K-C/Safeskin''). 68 FR 66491 (Nov. 26, 2003). K-C/Safeskin alleged violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain purple protective gloves by reason of infringement of U.S. Registered Trademark Nos. 2,596,539, 2,533,260, and 2,593,382.

Six of the seven respondents named in the complaint entered into settlement agreements with K-C/Safeskin. On May 24, 2004, the administrative law judge (''ALJ'') issued an initial determination (''ID'') (Order No. 15) terminating the investigation as to Latexx Partners Berhad and Medtexx Partners on the basis of a confidential settlement agreement. On June 1, 2004, the ALJ issued another ID (Order No. 16), terminating the investigation as to The Delta Group; Delta Hospital Supply, Inc.; Delta Medical Systems, Inc.; and Delta Medical Supply Group, Inc. on the basis of a settlement agreement and a consent order. The Commission determined not to review the IDs on June 22, 2004.

The seventh respondent—Dash Medical Gloves, Inc. (''Dash'')—failed to file a timely response to the complaint and notice of investigation. Dash filed a motion for termination of the investigation as to it by entry of a consent order. Subsequently, in response to an order to show cause why it should not be held in default, Dash withdrew its request for termination by entry of consent and indicated that it ''will not oppose entry of a Default in this matter.'' On May 24, 2004, the ALJ issued an ID (Order No. 14) finding Dash in default pursuant to Commission rule 210.16(a)(1). The Commission determined not to review the ID on June 22, 2004.

On September 23, 2004, the ALJ issued an ID (Order No. 17) finding ''substantial, reliable, and probative evidence'' of a violation of section 337 by reason of Dash's importation and sale of the accused gloves and the existence of a domestic industry. No party petitioned for review of the ID. The ALJ recommended the issuance of a general exclusion order, and that the bond permitting temporary importation during the Presidential review period be set at 100 percent of the value of the infringing imported product. On October 19, 2004, the Commission determined not to review this ID, and issued a notice seeking comments on remedy, the public interest, and bonding. K-C/Safeskin and the Commission investigative attorney (''IA'') supported the recommendations of the ALJ in briefs filed on November 12, 2004. The IA filed a reply on November 19, 2004.

Having examined the relevant portions of the record in this investigation, including the ALJ's recommended determination, and the written submissions on remedy, the public interest, and bonding, the Commission determined to issue a general exclusion order prohibiting unlicensed entry for consumption of purple protective gloves that infringe U.S. Registered Trademarks Nos. 2,596,539, 2,533,260, or 2,593,382. The Commission also determined that the public interest factors enumerated in section 337(d) do not preclude the issuance of the aforementioned remedial order and that the bond during the Presidential review period shall be 100 percent of the entered value of the articles in question. (The Commission's order was delivered to the President on the day of its issuance.)

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337(d)(2)), and sections 210.41 and 210.50 of the Commission's Rules of Practice and Procedure, (19 CFR 210.41 and 210.50).

By order of the Commission.

Issued: December 22, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–28337 Filed 12–27–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–517]

In the Matter of Certain Shirts With Pucker-Free Seams and Methods of Producing Same—Notice of Decision Not To Review an Initial Determination Partially Terminating the Investigation on the Basis of Withdrawal of Certain Allegations in the Complaint

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation partially terminating the investigation on the basis of withdrawal of certain allegations in the complaint.

FOR FURTHER INFORMATION CONTACT: Andrea Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3104. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. 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*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 3, 2004, based on a complaint filed by TAL Apparel Limited, TALTECH Limited, and The Apparel Group Limited (collectively ''TAL.'') 69 FR 47857 (August 6, 2004.) The complaint alleges violations of section 337 of the Tariff Act of 1930, 337 U.S.C. 1337, in the importation into the United States, sale for importation, and/or sale within the United States after importation of certain shirts with pucker-free seams that infringe claims 1, 4, 20 and 22 of U.S. Patent No. 5,568,779 (the '779 patent); claims 1, 11, 19 and 26 of U.S. Patent No. 5,590,615 (the '615 patent); claims 1, 3, 13 and 16

of U.S. Patent No. 5,713,292 (the '292 patent); and claims 16, 19, 35 and 38 of U.S. Patent No. 6,0079,343 (the '343 patent). The complaint names as respondents Esquel Apparel, Inc. and Esquel Enterprises Limited (collectively ''Esquel''). On October 4, 2004, the Commission issued a notice of determination not to review an ID (Order No. 4) granting TAL's motion to amend the complaint and notice of institution to amend the complaint to add an additional related patent, U.S. Patent No. 5,775,394 (the '394 patent) to the investigation. 69 FR 60422 (Oct. 8, 2004).

On October 4, 2004 TAL moved to withdraw the allegations of infringement with respect to the '292, '343, and '394 patents. Neither Esquel nor the Commission investigative attorney opposed the motion. On November 29, 2004, the presiding administrative law judge issued an ID (Order No. 5) granting TAL's motion to partially terminate the investigation on the basis of withdrawal of all allegations of infringement relating to the claims of the '292 patent, the '343 patent, and the '394 patent. No petitions for review of the ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and sections 210.21(a)(1) and 210.42(h) of the Commission Rules of Practice and Procedure, 19 CFR 210.21(a)(1) and 210.42(h).

By order of the Commission.

Issued: December 21, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–28338 Filed 12–27–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–2104–18]

U.S.-Central America Free Trade Agreement: Potential Economywide and Selected Sectoral Effects

AGENCY: International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt on November 17, 2004, of a request from the United States Trade Representative (USTR), the Commission instituted investigation No. TA–2104–18, U.S.-Central America Free Trade Agreement: Potential Economywide and Selected Sectoral Effects, under section 2104(f) of the Trade Act of 2002 (19 U.S.C. 3804(f)).

Background

As requested by the USTR, the Commission will prepare a report as specified in section 2104(f)(2)–(3) of the Trade Act of 2002 (the Trade Act) assessing the likely impact of the U.S. free trade agreement (FTA) with Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua (Central America) on the United States economy as a whole and on specific industry sectors and the interests of U.S. consumers.

Section 2104(f)(2) requires that the Commission submit its report to the President and the Congress not later than 90 days after the President enters into the agreement, which he can do 90 days after he notifies the Congress of his intent to do so. The President notified Congress of his intent to enter into an FTA with Central America on February 20, 2004. At that time, the President also stated that negotiations were under way to integrate the Dominican Republic into the FTA with Central America. That FTA was signed on August 5, 2004, and the Commission provided its report (U.S.-Central America-Dominican Republic Free Trade Agreement: Potential Economywide and Selected Sectoral Effects, Inv. No. TA-2104–13, publication 3717) on August 27, 2004. A public hearing for that investigation was held on April 27, 2004.

In his letter the USTR stated that the Dominican Republic subsequently (on October 1, 2004) enacted a tax on beverages sweetened with high fructose corn syrup that the United States regards as incompatible with the Dominican Republic's obligations under the signed FTA. He said that as a result of that action he informed Congress on October 1, 2004, that he would not recommend including the Dominican Republic in the legislation to implement the FTA signed on August 5, 2004 if the Dominican tax remained in place, and that the Administration would take steps to move forward with an FTA with the Central American countries. He said that the FTA with the Central American countries ''otherwise is the same as the one that the Commission has already assessed'' that included the Dominican Republic. In his letter requesting a new Commission report, the USTR asked the Commission to supplement its August 27 report by assessing the likely impact of a free trade agreement with Central America on the United States economy as a whole and on specific industry sectors and the interests of U.S. consumers.

As specified in section 2104(f)(2)–(3) of the Trade Act, the Commission's report will assess the likely impact of the FTA on the United States economy as a whole and on specific industry sectors, including the impact the agreement will have on the gross domestic product, exports and imports, aggregate employment and employment opportunities, the production, employment, and competitive position of industries likely to be significantly affected by the FTA, and the interests of U.S. consumers. In preparing its assessment, the Commission will review available economic assessments regarding the FTA, including literature regarding any substantially equivalent proposed agreement, and provide in its assessment a description of the analyses used and conclusions drawn in such literature, and a discussion of areas of consensus and divergence between the various analyses and conclusions, including those of the Commission regarding the agreement. Section 2104(f)(2) requires that the Commission submit its report to the President and Congress not later than 90 days after the President enters into an agreement with the five Central American countries.

EFFECTIVE DATE: December 28, 2004.

FOR FURTHER INFORMATION CONTACT: James Stamps, Project Leader, Office of Economics (202–205–3227 or *james.stamps@usitc.gov*). For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091 or *william.gearhart@usitc.gov*). For media information, contact Peg O'Laughlin (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Public Hearing: A public hearing in connection with this investigation is scheduled to begin at 9:30 a.m. on January 18, 2005, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. All persons have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file a letter with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, no later than the close of business (5:15 p.m.) on January 4, 2005. In addition, persons appearing should file prehearing briefs (original and 14 copies) with the Secretary by the close of business on January 4, 2005. Posthearing briefs should be filed with the Secretary by the close of business on January 26, 2005. In the event that no requests to appear at the hearing are received by the close of business on January 4, 2005, the hearing will be

canceled. Moreover, in the event that there is no hearing, the Commission shall reference in this report relevant testimony from the April 27, 2004 hearing. Any person interested in attending the hearing as an observer or nonparticipant may call the Secretary to the Commission (202–205–1816) after January 10, 2005 to determine whether the hearing will be held.

Written Submissions: In lieu of or in addition to appearing at the public hearing, interested persons are invited to submit written statements concerning the investigation. Submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. To be assured of consideration by the Commission, written statements related to the Commission's report should be submitted to the Commission at the earliest practical date, and should be received by the close of business on January 26, 2005. All written submissions, including briefs, must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 of the rules require that a signed original (or copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential business information (CBI) must be deleted (see the following paragraph for further information regarding CBI). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or *edis@usitc.gov*).

Any submissions, including briefs, that contain CBI also must conform with the requirements of section 201.6 of the Commission's rules (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages clearly be marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the CBI be clearly identified by means of brackets. All written submissions, except CBI, will be made available for inspection by interested parties.

The report that the Commission sends to the President and the Congress will not contain CBI. Although the Commission may aggregate or otherwise use CBI it receives in the course of this investigation in preparing its report, the Commission will not publish CBI in the report in a manner that would reveal the operations of the firm supplying the information. The report will be made available to the public on the Commission's Web site.

The public record for this report may ve viewed on the Commission's electronic docket (EDIS) at *http://edis.uistc.gov*. Hearing impaired individuals are advised that information on this matter can be obtained by contacting our 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.

By order of the Commission.

Issued: December 21, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–28327 Filed 12–27–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1058 (Final)]

Wooden Bedroom Furniture From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from China of wooden bedroom furniture, provided for in subheadings 9403.50.90 and 7009.92.50 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective October 31, 2003, following receipt of a petition filed with the Commission and Commerce by the American Furniture Manufacturers Committee for Legal Trade and its individual members; the Cabinet Makers, Millmen, and Industrial Carpenters, Local 721; the UBC Southern Council of Industrial Workers, Local 2305; the United Steelworkers of America, Local 193U; the Carpenters Industrial Union, Local 2093; the Teamsters, Chauffeurs, Warehousemen and Helpers, Local 991; and the IUE, Industrial Division of the CWA, Local 82472.

The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of wooden bedroom furniture from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 15, 2004 (69 FR 42452). The hearing was held in Washington, DC, on November 9, 2004, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 22, 2004. The views of the Commission are contained in USITC Publication 3743 (December 2004), entitled *Wooden Bedroom Furniture from China: Investigation No. 731–TA–1058 (Final).*

By order of the Commission.

Issued: December 22, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–28341 Filed 12–27–04; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–36574]

Notice of Consideration of Amendment Request for Decommissioning for U.S. Army Research Development and Engineering Command, Aberdeen Proving Ground, MD, and Opportunity To Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license amendment, opportunity to request a hearing, and solicitation of public comments.

DATES: A request for a hearing must be filed by February 28, 2005.

FOR FURTHER INFORMATION CONTACT: Tom McLaughlin, Project Manager, Decommissioning Directorate, Division

of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Telephone: (301) 415–5869; fax number: (301) 415–5398; e-mail: *tgm@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to U.S. Army Research Development and Engineering Command (Army as the licensee) to amend its License No. 19–10306–02 to authorize decommissioning of Building 7304 located in Fort Belvoir, Virginia, to allow the termination of this license.

License No. 19–10306–02 authorizes the licensee to conduct research and development as defined in 10 CFR 30.4; provide teaching and training of students; conduct calibration and checking of licensee's instruments; prepare low level counting standards; and demonstrate items being developed and/or tested. The Decommissioning Plan (DP) was submitted by the licensee on May 17, 2004. An NRC administrative review, documented in a letter to the U.S. Army Research Development and Engineering Command on August 24, 2004, found the DP acceptable to begin a technical review.

If the NRC approves the DP, the authorization to dismantle and demolish Building 7304 will be documented in an amendment to NRC License No. 19–10306–02. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment. The license will be terminated following issuance of this amendment and following completion of decommissioning activities and verification by the NRC in accordance with 10 CFR 20.1401.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for a license amendment to License No. 19–10306–02 to allow dismantlement and demolition of Building 7304 at the Army facility located in Fort Belvoir, Virginia. In accordance with the general requirements in Subpart C of 10 CFR Part 2, as amended on January 14, 2004 (69 FR 2182), any person whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

In accordance with 10 CFR 2.302(a), a request for a hearing must be filed with the Commission either by:

1. First class mail addressed to: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications;

2. Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff, between 7:45 a.m. and 4:15 p.m., Federal work days;

3. E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or

4. By facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff, at (301) 415–1101; verification number is (301) 415–1966.

In accordance with 10 CFR 2.302(b), all documents offered for filing must be accompanied by proof of service on all parties to the proceeding or their attorneys of record as required by law or by rule or order of the Commission, including:

1. The applicant, U.S. Army Research Development and Engineering Command, 5183 Blackhawk Road, Aberdeen Proving Ground, Maryland 21010, Attention: Major General John C. Doesburg, Commander; and

2. The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hearing requests should also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by e-mail to *ogcmailcenter@nrc.gov.*

The formal requirements for documents contained in 10 CFR 2.304(b), (c), (d), and (e), must be met. In accordance with 10 CFR 2.304(f), a document filed by electronic mail or facsimile transmission need not comply with the formal requirements of 10 CFR 2.304(b), (c), and (d), as long as an original and two (2) copies otherwise complying with all of the requirements of 10 CFR 2.304(b), (c), and (d) are mailed within two (2) days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by February 28, 2005.

In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other

information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to the petitioner. On issues arising under the National Environmental Policy Act, the requester/petitioner shall file contentions based on the applicant's environmental report. The requester/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft, or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns issues relating to matters discussed or referenced in the Safety Evaluation Report for the proposed action.
2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Environmental Report for the proposed action.
3. Emergency Planning—primarily concerns issues relating to matters discussed or referenced in the Emergency Plan as it relates to the proposed action.
4. Physical Security—primarily concerns issues relating to matters discussed or referenced in the Physical Security Plan as it relates to the proposed action.
5. Miscellaneous—does not fall into one of the categories outlined above.

If the requester/petitioner believes a contention raises issues that cannot be classified as primarily falling into one of these categories, the requester/petitioner must set forth the contention and supporting bases, in full, separately for each category into which the requester/petitioner asserts the contention belongs with a separate designation for that category.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so in writing within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Opportunity To Provide Comments

In accordance with 10 CFR 20.1405, the NRC is providing notice to individuals in the vicinity of the site that the NRC has received a license amendment request and decommissioning plan from the Army. The NRC will accept comments concerning this amendment request and DP. Comments with respect to this action should be provided in writing within 30 days of this notice and addressed to Mr. Tom McLaughlin, U.S. NRC, Washington, DC 20555–0001. Comments received after 30 days will be considered if practicable to do so, but only those comments received on or before the due date can be assured consideration.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agency wide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice is ML041490071. 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.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, located in O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Please note that on October 25, 2004, the NRC suspended public access to ADAMS, and initiated an additional security review of publicly available documents to ensure that potentially sensitive information is removed from the ADAMS database accessible through the NRC's web site. Interested members of the public may obtain copies of the referenced documents for review and/or copying by contacting the Public Document Room pending resumption of public access to ADAMS.

Dated at Rockville, Maryland, this 20th day of December, 2004.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Acting Director, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–28298 Filed 12–27–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting; Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of December 27, 2004, January 3, 10, 17, 24, 31, 2005.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 27, 2004

There are no meetings scheduled for the week of December 27, 2004.

Week of January 3, 2005—Tentative

Wednesday, January 5, 2005
2 p.m.—Affirmation Session (Public Meeting) (Tentative).
a. Private Fuel Storage (Independent Spent Fuel Storage Installation); Docket No. 72–22–ISFSI (Tentative).

Week of January 10, 2005—Tentative

Tuesday, January 11, 2005
9:30 a.m.—Discussion of Security Issues (Closed—Ex. 1 & 9).
Wednesday, January 12, 2005
9:30 a.m.—Discussion of Security Issues (Closed—Ex. 1).

Week of January 17, 2005—Tentative

There are no meetings scheduled for the week of January 17, 2005.

Week of January 24, 2005—Tentative

Monday, January 24, 2005
9:30 a.m.—Discussion of Security Issues (Closed—Ex. 1).
1:30 p.m.—Discussion of Security Issues (Closed—Ex. 1).
Tuesday, January 25, 2005
9:30 a.m.—Discussion of Security Issues (Closed—Ex. 1).

Week of January 31, 2005—Tentative

There are no meetings scheduled for the week of January 31, 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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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: December 22, 2004.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 04–28451 Filed 12–23–04; 9:29 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26712; File No. 812–13122]

Merrill Lynch Life Insurance Group, et al. Notice of Application

December 21, 2004.

AGENCY: The Securities and Exchange Commission (''Commission'').

ACTION: Notice of application (the ''Application'') for an order of exemption pursuant to Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') from Sections 2(a)(32) and 27(i)(2)(a) of the Act and Rule 22c–1 thereunder to allow recapture of a bonus amount.

Applicants: Merrill Lynch Life Insurance Company (''MLLIC''), Merrill Lynch Life Variable Annuity Separate Account A (''Account A''), Merrill Lynch Variable Annuity Separate Account C (''Account C''), Merrill Lynch Variable Annuity Separate Account D (''Account D''), ML Life Insurance Company of New York (''MLNY''), ML of New York Variable Annuity Separate Account A (''NY Account A''), ML of New York Variable Annuity Separate Account C (''NY Account C''), ML of New York Variable Annuity Separate Account D (''NY Account D''), and Merrill Lynch, Pierce, Fenner & Smith Incorporated (''MLPF&S'') (except for MLLIC, MLNY, and MLPF&S, each a ''separate account'' as defined in Section 2(a)(37) of the Investment Company Act of 1940, as amended (the ''Act''); each separate account collectively referred to herein as the ''Separate Accounts'') (all foregoing parties collectively referred to herein as the ''Applicants'').

Summary of Application: The Applicants request an order exempting them with respect to the variable annuity contracts described herein (the ''Contracts'') and other variable annuity contracts that are substantially similar in all material respects to the contracts described herein, that MLLIC and/or MLNY (together, the ''Companies'') may issue in the future (''Future Contracts''), and any other separate accounts of the Companies and their successors in interest (''Future Accounts'') that support Future Contracts, and certain NASD member broker-dealers which in the future, may act as principal underwriter of such contracts (''Future Underwriters''), from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, pursuant to Section 6(c) of the Act, to the extent necessary to permit the recapture of all or a portion of the bonus amounts (previously attributable to premium payments under the bonus class of the Contract (the ''XC Class'')) where the bonus amounts were applied and a contract owner (''Owner'') (1) returns the Contract during the ''Ten Day Right to Review'' period (the ''Free Look Period''); (2) dies within six months of receipt and acceptance by MLLIC or MLNY of a premium payment (unless the Contract is continued under the spousal benefit continuation option); or (3) surrenders the Contract (in full or in part) or the surrender value is paid to the Owner (because the Contract has been terminated for inactivity) within three years of receipt and acceptance by MLLIC or MLNY of a premium payment (pursuant to a bonus recapture schedule).

Filing Date: The Application was filed on September 3, 2004 and amended on December 20, 2004.

Hearing or Notification of Hearing: An order granting the Application will be issued unless the Commission orders a hearing. Interested person may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 18, 2005, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Edward W. Diffin, Jr., Esq., Merrill Lynch Insurance Group, Inc., 1300 Merrill Lynch Drive, 2nd Floor, Pennington, New Jersey 08534. Copies to Mary E. Thornton, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Ave., NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Robert Lamont, Attorney, at (202) 942–0676, or Lorna MacLeod, Branch Chief, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application; the complete Application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. MLLIC is a stock life insurance company that is domiciled in Arkansas. MLLIC was incorporated under the laws of the State of Washington on January 27, 1986, and redomesticated to the State of Arkansas on August 31, 1991. MLLIC is authorized to operate as a life insurance company in forty-nine states, the District of Columbia, the U.S. Virgin Islands, Guam, and Puerto Rico. Its principal offices are located at 1300 Merrill Lynch Drive, 2nd Floor, Pennington, New Jersey 08534. MLLIC is a wholly owned subsidiary of Merrill Lynch Insurance Group, Inc. (''MLIG''). MLLIC is an indirect wholly owned subsidiary of Merrill Lynch & Co., Inc., a publicly held company whose shares are traded on the New York Stock Exchange.

2. MLNY is a stock life insurance company that was organized under the

laws of the State of New York on November 28, 1973. MLNY is authorized to sell life insurance and annuities in nine states. Its principal offices are located at 222 Broadway, 14th Floor, New York, New York 10038. MLNY is a wholly owned subsidiary of MLIG. MLNY also is an indirect wholly owned subsidiary of Merrill Lynch & Co., Inc.

3. Account A was established by MLLIC under the insurance laws of the State of Arkansas on August 6, 1991. Account A is registered with the Commission under the Act as a unit investment trust. The assets of Account A support certain individual flexible premium variable annuity contracts. A registration statement to register interests in Account A offered through the Contracts has been filed with the Commission under the Securities Act of 1933, as amended (the ''1933 Act'') on Form N–4 (333–118362). Account A is a ''separate account'' as defined in Section 2(a)(37) of the Act. MLLIC is the legal owner of the assets in Account A. Any income, gain, or loss (whether or not realized) from the assets of Account A are credited to or charged against Account A without regard to MLLIC's other income, gain, or loss. Assets of Account A equal to its reserves and other liabilities under the Contracts may not be charged with liabilities arising from any other MLLIC business. Account A is comprised of various subdivisions called subaccounts (the ''Subaccounts''), which were established to receive and invest premium payments under the Contracts and other annuity contracts.

4. Account C was established by MLLIC under the insurance laws of the State of Arkansas on November 16, 2001. Account C is registered with the Commission under the Act as a unit investment trust. The assets of Account C support certain individual flexible premium variable annuity contracts. A registration statement to register interests in Account C offered through the Contracts will be filed with the Commission under the 1933 Act on Form N–4 in the near future. Account C is a ''separate account'' as defined in Section 2(a)(37) of the Act. MLLIC is the legal owner of the assets in Account C. Any income, gain, or loss (whether or not realized) from the assets of Account C are credited to or charged against Account C without regard to MLLIC's other income, gain, or loss. Assets of Account C equal to its reserves and other liabilities under the Contracts may not be charged with liabilities arising from any other MLLIC business. Account C is comprised of various Subaccounts.

5. Account D was established by MLLIC under the insurance laws of the State of Arkansas on June 21, 2002. Account D is registered with the Commission under the Act as a unit investment trust. The assets of Account D support certain individual flexible premium variable annuity contracts. A registration statement to register interests in Account D offered through the Contracts has been filed with the Commission under the 1933 Act on Form N–4 (333–119364). Account D is a ''separate account'' as defined in Section 2(a)(37) of the Act. MLLIC is the legal owner of the assets in Account D. Any income, gain, or loss (whether or not realized) from the assets of Account D are credited to or charged against Account D without regard to MLLIC's other income, gain, or loss. Assets of Account D equal to its reserves and other liabilities under the Contracts may not be charged with liabilities arising from any other MLLIC business. Account D is comprised of various Subaccounts.

6. NY Account A was established by MLNY under the insurance laws of the State of New York on August 14, 1991. NY Account A is registered with the Commission under the Act as a unit investment trust. The assets of NY Account A support certain individual flexible premium variable annuity contracts. A registration statement to register interests in NY Account A offered through the Contracts has been filed with the Commission under the 1933 Act on Form N–4 (333–119611). NY Account A is a ''separate account'' as defined in Section 2(a)(37) of the Act. MLNY is the legal owner of the assets in NY Account A. Any income, gain, or loss (whether or not realized) from the assets of NY Account A are credited to or charged against NY Account A without regard to MLNY's other income, gain, or loss. Assets of NY Account A equal to its reserves and other liabilities under the Contracts may not be charged with liabilities arising from any other MLNY business. NY Account A is comprised of various Subaccounts.

7. NY Account C was established by MLNY under the insurance laws of the State of New York on May 16, 2002. NY Account C is registered with the Commission under the Act as a unit investment trust. The assets of NY Account C support certain individual flexible premium variable annuity contracts. A registration statement to register interests in NY Account C offered through the Contracts will be filed with the Commission under the 1933 Act on Form N–4 in the near future. NY Account C is a ''separate account'' as defined in Section 2(a)(37) of the Act. MLNY is the legal owner of the assets in NY Account C. Any income, gain, or loss (whether or not realized) from the assets of NY Account C are credited to or charged against NY Account C without regard to MLNY's other income, gain, or loss. Assets of NY Account C equal to its reserves and other liabilities under the Contracts may not be charged with liabilities arising from any other MLNY business. NY Account C is comprised of various Subaccounts.

8. NY Account D was established by MLNY under the insurance laws of the State of New York on July 23, 2002. NY Account D is registered with the Commission under the Act as a unit investment trust. The assets of NY Account D support certain individual flexible premium variable annuity contracts. A registration statement to register interests in NY Account D offered through the Contracts has been filed with the Commission under the 1933 Act on Form N–4 (333–119797). NY Account D is a ''separate account'' as defined in Section 2(a)(37) of the Act. MLNY is the legal owner of the assets in NY Account D. Any income, gain, or loss (whether or not realized) from the assets of NY Account D are credited to or charged against NY Account D without regard to MLNY's other income, gain, or loss. Assets of NY Account D equal to its reserves and other liabilities under the Contracts may not be charged with liabilities arising from any other MLNY business. NY Account D is comprised of various Subaccounts.

9. MLPF&S, an indirect wholly owned subsidiary of Merrill Lynch & Co., Inc. and an affiliate of the Companies, is the principal underwriter and distributor of the Contracts. MLPF&S was organized in 1958 under the laws of the state of Delaware and is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, as amended, and is a member of the NASD.

10. Each Subaccount invests only in shares of a designated portfolio of certain management investment companies (the ''Funds''). The Companies may also make fixed account options available under the Contracts in the future.

11. The Contracts are individual flexible premium deferred variable annuity contracts issued by the Companies through the Separate Accounts. The Contracts provide for the accumulation of values on a variable basis during the accumulation period, and provide for a variety of annuity settlement options. Certain Contracts may be purchased on a non-qualified tax basis. Certain Contracts also may be purchased and used in connection with

plans qualifying for favorable federal income tax treatment. The Contracts currently offer four different charge structures, each referred to as a ''Class.'' Each Class, including an XC Class described in more detail below, imposes different surrender charges and asset-based insurance charges.

12. The Owner determines at the time of application for a Contract how premium payments will be allocated among the Subaccounts of the applicable Separate Account. The Owner generally may allocate premium payments to up to 20 of any of the available Subaccounts. The Contract Value, which is the total value of an Owner's interest in the Contract, will vary with the investment performance of the Subaccounts selected, and the Owner bears the entire risk for amounts allocated to the Subaccounts.

13. During the Free Look Period, an Owner has the right to return his or her Contract within ten days (or longer if required by state law). If the Contract is returned during the Free Look Period, the amount refunded will equal the Contract Value as of the date MLLIC or MLNY receives the returned Contract. However, in those states that require a return of premium payments in the event of Contract cancellation, the Companies will instead return the greater of all premium payments paid into the Contract (less any withdrawals) or the Contract Value as of the date MLLIC or MLNY receives the returned Contract.

In states that require a return of premium payments, the Companies will allocate all premium payments to a money market Subaccount during the first fourteen days following the Contract Date. In those states, the Companies bear any investment risk associated with the premium payments during the Free Look Period; otherwise, the Owner will bear any investment risk associated with the premium payments during the Free Look Period.

The Companies will not assess surrender charges against a Contract returned during the Free Look Period. The Companies will generally pay the refund within seven days after they receive the returned Contract. The Contract will then be considered void. As described in more detail below, the Companies intend to recapture bonus amounts added to the Contract Value if the Owner returns the Contract during the Free Look Period.

14. The Owner may surrender the Contract or make a partial withdrawal from Contract Value during the accumulation period. The minimum amount that may be withdrawn is $100, and at least $5,000 must remain in the Contract after a partial withdrawal (and any associated surrender charge) is made. If an Owner surrenders a Contract or takes a partial withdrawal, the Companies may deduct a surrender charge to compensate them for expenses relating to the sale of the Contracts, such as commissions, preparation of sales literature, and other promotional activity. Upon partial withdrawal, the Companies also may deduct any applicable premium taxes. Upon surrender, the Companies also will deduct any applicable contract fee, accrued but uncollected rider charges, and premium taxes. The surrender charge will be reduced using the ''free withdrawal amount'' provided for in the Contract. The free withdrawal amount is the portion of any partial withdrawal or surrender that is not subject to a surrender charge. The free withdrawal amount is the greater of: (a) 10% of the amount of each premium subject to a surrender charge (not to exceed the amount of each premium that had not been previously withdrawn as of the beginning of the Contract year), less any prior withdrawals during that Contract year; and (b) the ''gain'' in the Contract plus premiums remaining in the Contract that are no longer subject to a surrender charge. Any amount previously withdrawn from the Contract during that Contract year will be taken into account in determining the ''free withdrawal amount'' available as of the date of the withdrawal request. For the purpose of calculating the surrender charge, the Companies make withdrawals as if gain is withdrawn first, followed by premiums. Premium payments are assumed to be withdrawn on a first-in, first-out (''FIFO'') basis.

The surrender charge equals a percentage of each premium withdrawn. With regard to the XC Class offered under the Contracts, each premium is subject to the charge for the applicable period specified below from the date it is received and accepted by MLLIC or MLNY, as follows:

Complete years elapsed since payment of premium	Surrender charge percentage (as a percentage of the premium payment)
0	8.0
1	8.0
2	7.0
3	7.0
4	6.0
5	6.0
6	5.0
7	4.0
8	3.0
9	0

As described in more detail below, the Companies may recapture all or a portion of the bonus amounts added to the Contract Value if the Owner surrenders the Contract or makes a partial withdrawal within three years of MLLIC's or MLNY's receipt and acceptance of a premium payment.

15. Under certain circumstances, the Contract may be terminated due to inactivity. If no premiums have been received during the prior 24 months, the total of all premiums paid (less any partial withdrawals) is less than $2,000, and the Contract Value is less than $2,000, then the Contract may be terminated. No Contract will be terminated solely due to negative investment performance. Termination for inactivity is treated as a surrender for purposes of bonus recapture.

16. During the accumulation period, the Companies will pay a death benefit upon the Owner's death (upon the death of the first Owner to die if there are Co-Owners, or upon the death of the first Annuitant if any Owner is not a natural person). Unless the Owner selects an optional guaranteed minimum death benefit (''GMDB''), the death benefit will equal the Contract Value.

17. The Contracts provide four GMDB options that an Owner may select to purchase for an additional charge if the Owner (or the older Owner, if the Contract has Co-Owners, or the Annuitant, if the Owner is a non-natural person) is age 75 or under. If the Owner dies within 90 days of the Contract Date or within one year of the date of a change of Owner, any GMDB will equal the Contract Value. Some GMDB options may not be available in every state. If the Owner purchases a GMDB, the death benefit equals the greater of the Contract Value or the GMDB Base. The current calculation for each GMDB Base is described below.

18. In addition to the above death benefits and for an additional charge, an Owner may elect the Additional Death Benefit Rider if the Owner (or the older Owner, if the Contract has Co-Owners, or the older Annuitant, if the Owner is a non-natural person) is age 75 or under. This rider is designed to help offset expenses, including income taxes, attributable to payment of death benefit proceeds. The Additional Death Benefit Rider may not be available in all states. Upon payment of the death benefit, the Companies may deduct any applicable premium taxes.

19. As described in more detail below, the Companies will recapture any bonus amounts added to the Contract Value if the Owner (the first Owner to die, if there are Co-Owners, or the first Annuitant, if any Owner is not a natural

person) dies within six months of MLLIC's or MLNY's receipt and acceptance of the corresponding premium payment. However, if an Owner dies and the Contract is continued under the spousal benefit continuation option, any bonus amounts not previously recaptured will no longer be subject to recapture as of the spousal continuation date.

20. If an Owner elects the XC Class under the Contracts, then the Companies will add a bonus amount to the Contract Value each time the Owner makes a premium payment. With regard to an initial premium payment, the Companies will apply the corresponding bonus amount to an Owner's Contract Value on the Contract Date. With regard to each additional premium payment, the Companies will apply a corresponding bonus amount to an Owner's Contract Value at the end of the valuation period during which that premium payment is received and accepted at MLLIC's or MLNY's Service Center.

21. To calculate each bonus amount, the Companies will allocate the corresponding premium payment to one or more bonus tiers based on the amount of cumulative premium payments made under the Contract, as follows:

If cumulative premium payments are:	Then maximum bonus amount percentage is:	Then current bonus percentage is:	Then minimum guaranteed bonus percentage is:
Less than or equal to $25,000	5.0	4.5	3.0
Greater than $25,000 but less than or equal to $125,000	5.5	4.5	3.0
Greater than $125,000 but less than or equal to $500,000	5.5	4.5	3.5
Greater than $500,000 but less than or equal to $1,000,000	6.0	5.5	4.0
Greater than $1,000,000	7.0	5.5	4.5

Thus, the Companies may apply different bonus percentages to each premium payment (unless cumulative premium payments are less than or equal to $25,000) by breaking out the payment according to the ranges in the above table and multiplying the portion of the payment allocated to each tier by that tier's current bonus amount percentage. However, a premium payment will only be allocated to the first tier if cumulative premium payments are less than or equal to $25,000. If the initial premium payment exceeds $25,000, the first tier will not apply and the second tier will apply to all cumulative premiums less than or equal to $125,000. For example, an initial premium payment of $20,000 would receive a maximum bonus amount of $1,000 ($20,000 × 0.05 (tier 1)). If the initial premium payment is $100,000, the maximum bonus amount would be $5,500 ($100,000 × 0.055 (tier 2)). However, an initial premium payment of $700,000 would receive a maximum bonus amount of $39,500 ($125,000 × 0.055 (tier 2) + $375,000 × 0.055 (tier 3) + $200,000 × 0.06 (tier 4)).

No bonus amount (or subsequent recapture thereof, as discussed below) will be based on a percentage that exceeds the maximum bonus amount percentages shown in the above table. When calculating each bonus amount, ''cumulative premium payments'' do not include bonus amounts previously added to Contract Value. The bonus amount is allocated among the Subaccounts in the same manner as the corresponding premium payment. The Companies may change the current bonus amount percentage, but it will never be less than the minimum guaranteed bonus amount percentage listed in the table.

From time to time, the Companies may offer promotional programs with promotional rates for XC Class Contracts issued within specified periods of time (each, a ''Promotional Period''). Such promotional programs may apply to initial and/or subsequent premium payments received during the Promotional Period. Initial and/or subsequent premium payments received after the Promotional Period will receive the current bonus amount percentage in effect at that time. The Promotional Period will never exceed the maximum bonus amount. The Companies may terminate any promotional programs or offer other promotional programs at any time in their sole discretion.

22. If the Owner returns the Contract during the Free Look Period, then the Owner will not receive any portion of the bonus amounts (*i.e.*, the Companies will ''recapture'' the full amount of each bonus). In the event of the death of the Owner (or upon the death of the first Owner to die if there are Co-Owners, or upon the death of the first Annuitant if any Owner is not a natural person), the Companies will recapture any bonus amounts corresponding to premium payments received and accepted within the previous six months of death. Thus, under the XC Class, if an optional guaranteed minimum death benefit (''GMDB'') is not chosen the death benefit equals the Contract Value less any bonus amounts credited in the prior six months. If a GMDB is chosen, the death benefit equals the greater of the Contract Value less any bonus amounts credited in the prior six months or the GMDB Base (as defined above). However, in the event the Contract is continued under the spousal benefit continuation option, any bonus amounts not previously recaptured will no longer be subject to recapture as of the spousal continuation date. In the event of partial withdrawal or surrender within three years of MLLIC's or MLNY's receipt and acceptance of a premium payment, the Companies may recapture all or a portion of the corresponding bonus amount based on the bonus recapture percentages presented in the following schedule.

Completed years since receipt and acceptance of premium payment	Bonus recapture percentage for surrenders and partial withdrawals
0	100
1	65
2	30
3+	0

23. The Companies will recapture any bonus amounts subject to recapture from the Owner's Contract Value at the end of the valuation period during which the transaction request is received and accepted at MLLIC's or MLNY's Service Center. For each premium payment, the bonus amount subject to recapture is equal to the applicable bonus recapture percentage multiplied by (a) minus (b) where: (a) is the bonus amount attributable to that premium; and (b) is the sum of each

previously recaptured bonus amount attributable to that premium payment divided by the bonus recapture percentage on the date such amount was recaptured.

24. The Companies will deduct bonus amounts subject to recapture based on the associated premiums withdrawn from the Contract, which are determined on a ''first-in, first out'' (or ''FIFO'') basis. Currently, the Companies do not recapture any bonus amounts on withdrawals that are within the ''free withdrawal amount.'' The Companies reserve the right to recapture bonus amounts on withdrawals that are within the ''free withdrawal amount'' in the future. The amount actually recaptured is based on the bonus amount subject to recapture multiplied by the ratio of: (i) the associated premium payment withdrawn that was subject to a surrender charge to (ii) the total amount of that premium payment remaining in the Contract immediately prior to the withdrawal that was subject to a surrender charge. The Companies will deduct any recaptured bonus amounts on a pro rata basis from among the Subaccounts the Owner is invested in, based on the ratio of the Owner's Subaccount value to his or her total Subaccount value before the partial withdrawal.

25. If the Companies recapture a bonus amount, they will take back the bonus amount as if it had never been applied. However, the accumulated gain or loss on bonus amounts is never subject to recapture. Thus, an Owner bears any investment loss and retains any investment gain attributable to bonus amounts. The Companies will not re-credit any charges, including asset-based insurance charges, imposed on bonus amounts subsequently recaptured.

26. Although not currently permitted, in the future the Companies may permit an Owner to partially annuitize the Contract. Partial annuitizations would be considered to be partial withdrawals for purposes of calculations under the Contract, including bonus recaptures.

27. In addition to the fees and charges discussed above, the Companies deduct various other fees and charges. These currently include an asset-based insurance charge that varies by Subaccount (under the XC Class Contract this charge currently ranges from 1.55% to 1.80% of Subaccount assets (guaranteed not to exceed 2.00%)); a current annual contract fee of $50 (guaranteed not to exceed $75), which will apply if the greater of Contract Value or premiums less withdrawals is less than $50,000; transfer fee of $25 (guaranteed not to exceed $30) for each transfer above 12 per Contract year; premium taxes or other taxes by any governmental entity; and fees for optional benefits or riders.

Applicants' Legal Analysis

1. The Applicants respectfully request that the Commission, pursuant to Section 6(c) of the Act, grant the exemptions set forth below to permit the Applicants to recapture all or a portion of bonus amounts attributable to premium payments under the Contract's XC Class when an Owner (1) returns the Contract during the Free Look Period; (2) dies within six months of receipt and acceptance by MLLIC or MLNY of a premium payment (unless the Contract is continued under the spousal benefit continuation option); or (3) surrenders the Contract (in full or in part) or the surrender value is paid to the Owner (because the Contract has been terminated for inactivity) within three years of receipt and acceptance by MLLIC or MLNY of a premium payment (pursuant to a bonus recapture schedule).

2. Because the provisions described below may be inconsistent with a recapture of bonus amounts, the Applicants request exemptions for the Contracts described herein, and for Future Contracts, from Sections 2(a)(32) and 27(i)(2)(a) of the Act, and Rule 22c–1 thereunder, pursuant to Section 6(c), to the extent necessary to recapture the bonus amounts, as described above. The Applicants seek exemptions therefrom in order to avoid any questions concerning the Contracts' compliance with the Act and rules thereunder. For the reasons discussed below, the exemptions requested herein are necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

3. To the extent that the bonus amount recapture might be seen as a discount from the net asset value, or might be viewed as resulting in the payment to an Owner of less than the proportionate share of the issuer's net assets, the bonus amount recapture would trigger the need for relief absent some exemption from the Act. Rule 6c–8 provides, in relevant part, that a registered separate account, and any depositor of such account, shall be exempt from Sections 2(a)(32), 22(c), 27(c)(1), 27(c)(2), and 27(d) of the Act and Rule 22c–1 thereunder to the extent necessary to permit them to impose a deferred sales load on any variable annuity contract participating in such account. However, the bonus amount recapture is not a sales load, but a recapture of bonus amounts MLLIC or MLNY previously attributed to an Owner's premium payments. The Companies provide the bonus amounts from their general accounts on a guaranteed basis. The Contracts are designed to be long-term investment vehicles. In undertaking this financial obligation, the Companies contemplate that an Owner will retain a Contract over an extended period, consistent with the long-term nature of the Contracts. The Companies designed the product so that they would recover their costs (including the bonus amounts) over an anticipated duration while a Contract is in force. If an Owner withdraws his money during the Free Look Period, or a death benefit is paid, or a withdrawal or surrender is made, before this anticipated period, the Companies must recapture the bonus amounts subject to recapture in order to avoid a loss.

4. The recapture of bonus amounts does not violate Section 2(a)(32) of the Act. The bonus amount recapture provision pursuant to the Contract's XC Class does not deprive the Owner of his or her proportionate share of the issuer's current net assets. In the case of death of the Owner, an Owner will have the full right to any bonus amounts not previously recaptured six months following MLLIC's or MLNY's receipt and acceptance of the corresponding premium payment. In the case of partial or full surrender, an Owner's right to a portion of a bonus amount not previously recaptured will begin one year following MLLIC's or MLNY's receipt and acceptance of the corresponding premium payment, and an Owner will have the full right to any such remaining bonus amount three years following MLLIC's or MLNY's receipt and acceptance of the corresponding premium payment. Until that time, the Companies retain the right and interest in the dollar amount of any bonus amounts subject to recapture. Thus, when the Companies recapture all or a portion of a bonus amount, they are only retrieving their own assets, and because an Owner does not have an interest in the bonus amount, such Owner would not be deprived of a proportionate share of the applicable Separate Account's assets (the issuer's current net assets) in violation of Section 2(a)(32). Therefore, such recapture does not reduce the amount of the applicable Separate Account's current net assets an Owner would otherwise be entitled to receive. However, to avoid uncertainty as to full compliance with the Act, the Applicants request an exemption from the

provisions of Sections (2)(a)(32) and 27(i)(2)(A) to the extent deemed necessary to permit them to recapture all or a portion of the bonus amounts under the Contracts and Future Contracts.

5. As a result of the bonus amounts available under the Contract's XC Class, an Owner who made an initial premium payment of $10,000 in the first Contract year could be viewed as having a Contract Value of $10,400 before any earnings accrued. The Companies' addition of bonus amounts might arguably be viewed as resulting in an Owner purchasing a redeemable security for a price below the current net asset value. Further, by recapturing the bonus amounts, the Companies might arguably be redeeming a redeemable security for a price other than one based on the current net asset value of the applicable Separate Account.

6. An Owner's interest in his or her Contract Value would always be offered at a price based on the net asset value next calculated after receipt of the order. The granting of bonus amounts does not reflect a reduction of that price. Instead, the Companies will purchase with their own general account assets an interest in the applicable Separate Account equal to the bonus amounts. Because the bonus amounts will be paid out of MLLIC's or MLNY's assets, not the applicable Separate Account's assets, no dilution will occur as a result of the bonus amounts.

7. The recapture of bonus amounts does not involve either of the two harms that the Commission intended to eliminate or reduce with Rule 22c–1. The Commission's stated purposes in adopting Rule 22c–1 were to avoid or minimize: (1) Dilution of the interests of other security holders; and (2) speculative trading practices that are unfair to such holders. These two concerns were the result of backward pricing, the practice of basing the price of a mutual fund share on the net asset value per share determined as of the close of the market on the previous day. Backward pricing allowed investors to take advantage of increases or decreases in net asset value that were not yet reflected in the price, and thereby the values of outstanding mutual fund shares were diluted.

8. The proposed recapture of bonus amounts under the Contracts does not pose such threat of dilution. The bonus amount recapture will not alter an Owner's net asset value. The Companies will determine an Owner's surrender value (an amount equal to the Contract Value reduced by any charges (including the surrender charge) and increased by any credits applied upon surrender) under a Contract in accordance with Rule 22c–1 on a basis next computed after receipt of an Owner's request for surrender (likewise, the calculation of death benefits and annuity payment amounts will be in full compliance with the forward pricing requirement of Rule 22c–1). The amount recaptured will equal all or a portion of bonus amounts that MLLIC or MLNY paid out of its general account assets.

It is not administratively feasible to track the bonus amount in the Separate Accounts after the Companies apply the bonus. As a result, the asset-based charges applicable to the Separate Accounts will be assessed against the entire amount held in the Separate Accounts, including the bonus amount, during the time the bonus amount is subject to recapture. During this time, the aggregate asset-based charges assessed against an Owner's Contract Value will be higher than those that would be charged if the Owner's Contract Value did not include the bonus amount, but the increment will obviously be only a small percentage of the bonus amount. On the other hand, an Owner will retain any investment benefit from the bonus amount. Although an Owner will retain any investment gain attributable to the bonus amounts, the Companies will determine the amount of such gain on the basis of the current net asset value of the Subaccount. Thus, no dilution will occur upon the recapture of bonus amounts.

9. Further, the other harm that Rule 22c–1 was designed to address (speculative trading practices calculated to take advantage of backward pricing) will not occur as a result of MLLIC's or MLNY's recapture of a bonus amount. Variable annuities are designed for long-term investment, and by their nature, do not lend themselves to the kind of speculative short-term trading that Rule 22c–1 was designed to prevent. More to the point, the bonus recapture simply does not create the opportunity for speculative trading.

10. Rule 22c–1 should have no application to a bonus amount, as neither of the harms that Rule 22c–1 was designed to address are present in the recapture of bonus amounts. However, to avoid uncertainty as to full compliance with the Act, the Applicants request an exemption from the provisions of Rule 22c–1 to the extent deemed necessary to permit them to recapture bonus amounts available through the XC Class under the Contracts and Future Contracts.

11. The Commission should grant the exemptions requested in this Application, even if the bonus amounts described herein arguably conflicts with Sections 2(a)(32) or 27(i)(2)(A) of the Act or Rule 22c–1 thereunder. The bonus amount provisions are generally beneficial to Owners. The recapture provisions temper this benefit somewhat, but only if an Owner redeems his or her money under the circumstances described herein. While there would be a small downside in a declining market where an Owner would bear any losses attributable to the bonus amounts, it is the converse of the benefits an Owner would receive on the bonus amounts in a rising market. As any earnings on bonus amounts applied would not be subject to recapture and thus would be immediately available to an Owner, likewise any losses on bonus amounts would also not be subject to recapture and thus would be immediately available to an Owner. The bonus amount recapture provision does not diminish the overall value of the bonus amounts.

12. MLLIC's or MLNY's recapture of bonus amounts is designed to prevent anti-selection against it. The risk of anti-selection would be that an Owner could make significant premium payments into the Contract solely in order to receive a quick profit from the bonus amounts. By recapturing the bonus amounts, the Companies protect themselves against the risk that an Owner will make such large premium payments, receive the bonus amounts, and then withdraw his or her money from the Contract. The Companies generally protect themselves from this kind of anti-selection, and recover their costs in situations where an Owner withdraws his or her money early in the life of a Contract, by imposing a surrender charge. However, where an Owner withdraws his money during the Free Look Period or a death benefit is paid, the Companies do not apply this charge.

13. The Applicants seek relief herein not only for themselves with respect to the support of the Contracts, but also with respect to Future Accounts or Future Contracts described herein. The Applicants represent that the terms of the relief requested with respect to any Contracts or Future Contracts funded by the Separate Accounts or Future Accounts are consistent with the standards set forth in Section 6(c) of the Act and Commission precedent. The Commission has previously granted class relief (from certain specified provisions of the Act for separate accounts that support variable annuity contracts) that is materially similar to the relief described in this Application.

14. In addition, the Applicants seek relief herein with respect to Future Underwriters (*i.e.*, a class consisting of NASD member broker-dealers that may also act as principal underwriter of the Contracts and Future Contracts). The Commission has regularly granted relief to ''future underwriters'' that are not named, and are not affiliates of the applicants. The Applicants represent that the terms of the relief requested with respect to any Future Underwriters are consistent with the standards set forth in Section 6(c) of the Act and Commission precedent.

15. Without the requested class relief, exemptive relief for any Future Account, Future Contract, or Future Underwriter would have to be requested and obtained separately. These additional requests for exemptive relief would present no issues under the Act not already addressed herein. If the Applicants were to repeatedly seek exemptive relief with respect to the same issues addressed herein, investors would not receive additional protection or benefit, and investors and the Applicants could be disadvantaged by increased costs from preparing such additional requests for relief. The requested class relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for the Companies to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Elimination of the delay and the expense of repeatedly seeking exemptive relief would enhance the Applicants' ability to effectively take advantage of business opportunities as such opportunities arise. The Applicants' request for class exemptions is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and that an order of the Commission including such class relief, should, therefore, be granted. Any entity that currently intends to rely on the requested exemptive order is named as an Applicant. Any entity that relies upon the requested order in the future will comply with the terms and conditions contained in this Application.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–28273 Filed 12–27–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Artec, Inc.; Order of Suspension of Trading

December 23, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Artec, Inc. (''ATKJ'') because of questions regarding the accuracy of assertions by ATKJ and others, on ATKJ's Web site, in ATKJ's press releases, and in public statements to investors concerning, among other things, the testing of ATKJ's Tubercin substance for use in treating cancer patients.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. e.s.t. December 23, 2004 through 11:59 p.m. e.s.t., on January 7, 2005.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–28473 Filed 12–23–04; 11:55 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50894; File No. SR–Amex–2004–93]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto Relating to Customer Transaction Charges for the Trading of Nasdaq-100 Index Tracking Stock(®)

December 20, 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 22, 2004, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 7, 2004, Amex filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend the Amex Equity and Exchange Traded Funds and Trust Issued Receipts Fee Schedules to provide for customer transactions charges for the trading of Nasdaq-100 Index Tracking Stock(®) (Symbol: QQQQ) pursuant to the Nasdaq Unlisted Trading Privileges Plan. The text of the proposed rule change, as amended, is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex 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

Effective December 1, 2004, the Nasdaq-100 Index Tracking Stock(®) listed on the Nasdaq Stock Market, Inc. It trades on Nasdaq under the symbol QQQQ. The Amex trades the QQQQ on an unlisted trading privileges basis. The Amex proposes to amend the Amex Equity and Exchange Traded Funds and Trust Issued Receipts Fee Schedules (''Amex Fee Schedules'') to provide that the customer transaction charges in QQQQ would be $.0015 per share ($.15 per 100 shares), capped at $100 per trade. This would be one-fourth of the regular customer transaction charge for the Nassaq–100 Index Tracking Stock(®) when it was listed on the Amex (although the Amex has suspended

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Amex restated the proposed rule change in its entirety.

these charges since August 2001) and for other Exchange Traded Fund Shares. The Exchange believes that this fee level would encourage competition among markets trading QQQQ and enhance the Amex's competitiveness in trading this security. In order to reflect the lower transaction charges in QQQQ for customers on the Exchange Traded Funds and Trust Issued Receipts Fee Schedule (''ETF Fee Schedule''), a new Section IV would be added specifically to set forth transaction charges in QQQQ for customers as well as the specialist and registered traders. The transaction charges for all three market participants previously were included in Section II of the ETF Fee Schedule since they were the same in each case as the transaction charges for other Exchange Traded Funds for which the Exchange pays unreimbursed fees to a third party. Although the text of Section IV is entirely new, it would reflect the current transaction charges in place for specialists and registered traders, this proposal is not seeking to establish new transaction charges for the specialist and registered traders.

In addition, the Amex has determined that during the first month of trading QQQQ pursuant to unlisted trading privileges, it would suspend these customer charges. The Amex Fee Schedules also would be amended to reflect this temporary suspension.

2. Statutory Basis

The Amex believes the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(4) of the Act,[5] in particular, in that it is intended to provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.[6]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, would impose any burden on competition.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] The Commission changed this sentence to reflect statutory basis for the proposed rule change pursuant to Section 6(b)(4) of the Act, rather than Section 6(b)(5). Telephone conversation among Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, Ann E. Leddy, Special Counsel, and Ted Venuti, Attorney, Division of Market Regulation, Commission (December 9, 2004).

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. 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–Amex–2004–93 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–Amex–2004–93. 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 Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Amex–2004–93 and should be submitted on or before January 18, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission believes that the proposed change in customer transaction charges is not unreasonable and should not discriminate unfairly among market participants.

The Amex has requested that the Commission find good cause for approving the proposed rule change and Amendment No. 1 thereto prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission notes that granting accelerated approval of the proposal would allow the Amex to implement the proposed changes to its fee schedule for QQQQ in a manner which coincides with the start of trading QQQQ pursuant to unlisted trading privileges. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[9] for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Amex–2004–93), and Amendment No. 1 thereto, are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3831 Filed 12–27–04; 8:45 am]

BILLING CODE 8010–01–P

[7] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(2).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50880; File No. SR–CBOE–2004–83]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. To Amend Its Obvious Error Rule

December 17, 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 December 9, 2004, the Chicago Board Options Exchange, Inc. (''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 Exchange. The proposed rule change has been filed by CBOE as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] On December 13, 2004, CBOE submitted Amendment No. 1 to the proposed rule change.[5] On December 16, 2004, CBOE submitted Amendment No. 2 to the proposed rule change.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its obvious error rule. Additions are italicized. Deletions are bracketed.

* * * * *

Rule 6.25 Nullification and Adjustment of [Electronic] Equity Options Transactions

This Rule governs the nullification and adjustment of [options trades] *transactions involving equity options. Rule 24.16 governs the nullification and adjustment of transactions involving index options and options on ETFs and HOLDRs.* Paragraphs (a)(1), *and* (2)[, (6), and (7)] of this Rule have no applicability to trades executed in open outcry.

(a) Trades Subject to Review

A member or person associated with a member may have a trade adjusted or nullified if, in addition to satisfying the procedural requirements of paragraph (b) below, one of the following conditions is satisfied:

(1) *Obvious Price Error:* [An obvious pricing error will be deemed to have occurred when the execution price of a transaction is above or below the fair market value of the option by at least a prescribed amount. For series trading with normal bid-ask differentials as established in Rule 8.7(b)(iv), the prescribed amount shall be: (a) The greater of $0.10 or 10% for options trading under $2.50; (b) 10% for options trading at or above $2.50 and under $5; or (c) $0.50 for options trading at $5 or higher. For series trading with bid-ask differentials that are greater than the widths established in Rule 8.7(b)(iv), the prescribed error amount shall be: (a) The greater of $0.20 or 20% for options trading under $2.50; (b) 20% for options trading at or above $2.50 and under $5; or (c) $1.00 for options trading at $5 or higher.

(i) *Definition of Fair Market Value:* For purposes of this Rule only, the fair market value of an option is the midpoint of the national best bid and national best offer for the series (across all exchanges trading the option). In multiply listed issues, if there are no quotes for comparison purposes, fair market value shall be determined by Trading Officials. For singly-listed issues, fair market value shall be the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s). For transactions occurring as part of the Rapid Opening System (''ROS trades'') or Hybrid Opening System (''HOSS''), fair market value shall be the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s).]

An obvious pricing error occurs when the execution price of an electronic transaction is above or below the Theoretical Price for the series by an amount equal to at least the amount shown below:

Theoretical price	*Minimum amount*
Below $2	*$0.25*
$2 to $5	*0.40*
Above $5 to $10	*0.50*
Above $10 to $20	*0.80*
Above $20	*1.00*

Definition of Theoretical Price. For purposes of this Rule only, the Theoretical Price of an option series is, for series traded on at least one other options exchange, the last bid price with respect to an erroneous sell transaction and the last offer price with respect to an erroneous buy transaction, just prior to the trade, disseminated by the competing options exchange that has the most liquidity in that option class in the previous two calendar months.

If there are no quotes for comparison, designated Trading Officials will determine the Theoretical Price. For transactions occurring as part of the Rapid Opening System (''ROS trades'') or Hybrid Opening System (''HOSS''), Theoretical Price shall be the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s).

Price Adjustment or Nullification: Obvious Pricing Errors will be adjusted or nullified in accordance with the following:

Transactions Between CBOE Market Makers: Where both parties to the transaction are CBOE Market-Makers, the execution price of the transaction will be adjusted by Trading Officials to the prices provided in Paragraphs (A) and (B) below, minus (plus) an adjustment penalty (''adjustment penalty''), unless both parties agree to adjust the transaction to a different price or agree to bust the trade within fifteen (15) minutes of being notified by Trading Officials of the Obvious Error.

A. Erroneous buy transactions will be adjusted to their Theoretical Price plus an adjustment penalty of either $.15 if the Theoretical Price is under $3 or $.30 if the Theoretical Price is at or above $3.

B. Erroneous sell transactions will be adjusted to their Theoretical Price minus an adjustment penalty of either $.15 if the Theoretical Price is under $3 or $.30 if the Theoretical Price is at or above $3.

Transactions Involving at least one non-CBOE Market Maker: Where one of the parties to the transaction is not a CBOE market maker, the transactions will be nullified by Trading Officials unless both parties agree to an adjustment price for the transaction within thirty (30) minutes of being notified by Trading Officials of the Obvious Error.

(2) [Obvious Quantity Error: An obvious error in the quantity term will

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] In Amendment No. 1, CBOE proposes to adopt new Interpretations and Policies .03 to Rule 6.25. The purpose of adopting this provision is to provide a definition of ''erroneous buy'' and ''erroneous sell'' transaction. Additionally, the Exchange proposes to capitalize the term ''Theoretical Price'' in the last sentence of proposed paragraph (a)(1) of CBOE Rule 6.25.

[6] In Amendment No. 2, CBOE proposes to replace paragraph (c) of proposed CBOE Rule 24.16 and to make a technical correction to proposed paragraph (a)(1) of CBOE Rule 6.25 by replacing the word ''with'' with the word ''within.''

be deemed to occur when the transaction size exceeds the responsible broker or dealer's average disseminated size over the previous four hours by a factor of five (5) times. The quantity to which a transaction shall be adjusted from an obvious quantity error shall be the responsible broker or dealer's average disseminated size over the previous four trading hours (which may include the previous trading day).]

No Bid Series: Electronic transactions in series quoted no bid at a nickel (i.e., $0.05 offer) will be nullified provided at least one strike price below (for calls) or above (for puts) in the same options class was quoted no bid at a nickel at the time of execution.

(3) Verifiable Disruptions or Malfunctions of Exchange Systems: *Electronic or open outcry transactions* [Trades] arising out of a ''verifiable disruption or malfunction'' in the use or operation of any Exchange automated quotation, dissemination, execution, or communication system [may] *will* either be nullified or adjusted by Trading Officials. *Transactions that qualify for price adjustment will be adjusted to Theoretical Price, as defined in paragraph (a)(1) above.*

(4) *Erroneous Print in Underlying:* A trade resulting from an erroneous print disseminated by the underlying market which is later cancelled or corrected by that underlying market may be [adjusted or] nullified. In order to be [adjusted or] nullified, however, the trade must be the result of an erroneous print that is higher or lower than the average trade in the underlying security during a two-minute period before and after the erroneous print by an amount at least five times greater than the average quote width for such underlying security during the same period.

For purposes of this Rule, the average trade in the underlying security shall be determined by adding the prices of each trade during the four minute time period referenced above (excluding the trade in question) and dividing by the number of trades during such time period (excluding the trade in question). For purposes of this Rule, the average quote width shall be determined by adding the quote widths of each separate quote during the four minute time period referenced above (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question).

[(5) *Erroneous Quote in Underlying:* A trade resulting from an erroneous quote in the underlying security may be adjusted or nullified. An erroneous quote occurs when the underlying security has a width of at least $1.00 and has a width at least five times greater than the average quote width for such underlying security on the primary market during the time period encompassing two minutes before and after the dissemination of such quote.

(6) *Trades Below Intrinsic Value:* An obvious pricing error will be deemed to occur when the transaction price of an equity option is more than $0.10 below the intrinsic value of the same option (an option that trades at its intrinsic value is sometimes said to trade at ''parity''). Paragraph (6) shall not apply to transactions occurring during the last two minutes of the trading day (which is typically 3:00:01 p.m. (CT) to 3:02 p.m. (CT)) on days with regular trading hours).

(i) *Definition of Intrinsic Value:* For purposes of this Rule, the intrinsic value of an equity call option equals the value of the underlying stock (measured from the bid or offer as described below) minus the strike price, and the intrinsic value of an equity put option equals the strike price minus the value of the underlying stock (measured from the bid or offer as described below), provided that in no case is the intrinsic value of an option less than zero. In the case of purchasing call options and selling put options, intrinsic value is measured by reference to the bid in the underlying security, and in the case of purchasing put options and selling call options, intrinsic value is measured by reference to the offer in the underlying security.

(7) No Bid Series: Electronic transactions in series quoted no bid at a nickel (*i.e.*, $0.05 offer) will be nullified provided at least one strike price below (for calls) or above (for puts) in the same options class was quoted no bid at a nickel at the time of execution.]

(b) Procedures for Reviewing Transactions

(1) *Notification:* Any member or person associated with a member that believes it participated in a transaction that may be adjusted or nullified in accordance with paragraph (a) must notify any Trading Official promptly but not later than fifteen (15) minutes after the execution in question. [For transactions occurring after 2:45 p.m. (CST), notification must be provided promptly but not later than fifteen (15) minutes after the close of trading of that security on CBOE.] Absent unusual circumstances, Trading Officials shall not grant relief under this Rule unless notification is made within the prescribed time periods. In the absence of unusual circumstances, Trading Officials (either on their own motion or upon request of a member) must initiate action pursuant to paragraph (a)(3) above within sixty (60) minutes of the occurrence of the verifiable disruption or malfunction. When Trading Officials take action pursuant to paragraph (a)(3), the members involved in the transaction(s) shall receive verbal notification as soon as is practicable.

(2) *Review and Determination:* Once a party to a transaction has applied to a Trading Official for review, the transaction shall be reviewed and a determination rendered, unless both parties to the transaction agree to withdraw the application for review prior to the time a decision is rendered. Absent unusual circumstances (*e.g.*, a large number of disputed transactions arising out of the same incident), Trading Officials must render a determination within sixty (60) minutes of receiving notification pursuant to paragraph (b)(1) above. [If the transaction(s) in question occurred after 2:30 p.m., Trading Officials shall have until 9:30 a.m. the following morning to render a determination.] Trading Officials shall promptly provide verbal notification of a determination to the members involved in the disputed transaction and to the control room.

[(c) Adjustments

Unless otherwise specified in Rule 6.25(a)(1)-(6), transactions will be adjusted provided the adjusted price does not violate the customer's limit price. Otherwise, the transaction will be nullified. With respect to 6.25(a)(1)-(5), the price to which a transaction shall be adjusted shall be the National Best Bid (Offer) immediately following the erroneous transaction with respect to a sell (buy) order entered on the Exchange. For ROS or HOSS transactions, the price to which a transaction shall be adjusted shall be based on the first non-erroneous quote after the erroneous transaction on CBOE. With respect to 6.25(a)(6), the transaction shall be adjusted to a price that is $0.10 under parity.]

(c) Obvious Error Panel

(i) Composition. An Obvious Error Panel will be comprised of at least one (1) Trading Floor Liaison (TFL) and four (4) Exchange members. Fifty percent of the number of Exchange members on the Obvious Error Panel must be directly engaged in market making activity and fifty percent of the number of Exchange members on the Obvious Error Panel must act in the capacity of a non-DPM floor broker. The Exchange members shall be representatives from any of the following Committees: Equity Options Procedure Committee, Equity Market Performance Committee, and Floor Officials Committee.

(ii) Scope of Review. If a party affected by a determination made under this Rule so requests within the time permitted in paragraph (b), an Obvious Error Panel will review decisions made by the Trading Officials under this Rule, including whether an obvious error occurred, whether the correct Theoretical Price was used, and whether the correct adjustment was made at the correct price. A party may also request that the Obvious Error Panel provide relief as required in this Rule in cases where the party failed to provide the notification required in paragraph (b) and the Trading Officials declined to grant an extension, but unusual circumstances must merit special consideration.

(iii) Procedure for Requesting Review. A request for review must be made in writing within (30) minutes after a party receives verbal notification of a final determination by the Trading Officials under this Rule, except that if notification is made after 2:30 p.m. Central Time (''CT''), either party has until 8:30 a.m. CT the next trading day to request review. The Obvious Error Panel shall review the facts and render a decision on the day of the transaction, or the next trade day in the case where a request is properly made the next trade day.

(iv) Panel Decision. The Obvious Error Panel may overturn or modify an action taken by the Trading Officials under this Rule upon agreement by a majority of the Panel representatives. All determinations by the Obvious Error Panel may be appealed in accordance with paragraph (d) of this rule.

(d) Review by the Appeals Committee

A member affected by a determination made under this rule may appeal such determination to the Appeals Committee, in accordance with Chapter XIX of the Exchange's rules. For purposes of this Rule, a member must be aggrieved as described in Rule 19.1. Notwithstanding any provision in Rule 19.2 to the contrary, a request for review must be made in writing (in a form and manner prescribed by the Exchange) no later than the close of trading on the next trade date after the member receives verbal notification of such determination by Trading Officials.

(e) Negotiated Trade Nullification

A trade may be nullified if the parties to the trade agree to the nullification. When all parties to a trade have agreed to a trade nullification one party must promptly disseminate cancellation information in OPRA format.

Interpretations and Policies* * *

.01 Applicability: Trading Officials may also allow for the execution of ROS trades (and assign those trades to participating ROS market-makers) that were not executed on the opening but that should have been executed had ROS opened the series at the non-erroneous quote. The Exchange will endeavor to notify its members as soon as practicable after the correction of an erroneous print and will indicate that this may result in the adjustment of trades executed pursuant to ROS. The only trades that will be adjusted are those that were executed on the opening or those that should have executed on the opening. All adjustments will be made during the day when the correction of the erroneous print occurred.

.02 Trading Officials: The term ''Trading Officials'' means two Exchange members designated as Floor Officials and one member of the Exchange's trading floor liaison (TFL) staff.

.03 Definitions: For purposes of this Rule, an ''erroneous sell transaction'' is one in which the price received by the person selling the option is erroneously low, and an ''erroneous buy transaction'' is one in which the price paid by the person purchasing the option is erroneously high.

* * * * *

Rule 24.16 Nullification and Adjustment of Index Option Transactions

This Rule only governs the nullification and adjustment of transactions involving index options and options on ETFs or HLDRs. Rule 6.25 governs the nullification and adjustment of transactions involving equity options. Paragraphs (a)(1), (2), (6) and (7) of this Rule have no applicability to trades executed in open outcry.

(a) Trades Subject to Review

A member or person associated with a member may have a trade adjusted or nullified if, in addition to satisfying the procedural requirements of paragraph (b) below, one of the following conditions is satisfied:

(1) Obvious Price Error: An obvious pricing error will be deemed to have occurred when the execution price of a transaction is above or below the fair market value of the option by at least a prescribed amount. For series trading with normal bid-ask differentials as established in Rule 8.7(b)(iv), the prescribed amount shall be: (a) the greater of $0.10 or 10% for options trading under $2.50; (b) 10% for options trading at or above $2.50 and under $5; or (c) $0.50 for options trading at $5 or higher. For series trading with bid-ask differentials that are greater than the widths established in Rule 8.7(b)(iv), the prescribed error amount shall be: (a) the greater of $0.20 or 20% for options trading under $2.50; (b) 20% for options trading at or above $2.50 and under $5; or (c) $1.00 for options trading at $5 or higher.

(i) Definition of Fair Market Value: For purposes of this Rule only, the fair market value of an option is the midpoint of the national best bid and national best offer for the series (across all exchanges trading the option). In multiply listed issues, if there are no quotes for comparison purposes, fair market value shall be determined by Trading Officials. For singly-listed issues, fair market value shall be the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s). For transactions occurring as part of the Rapid Opening System (''ROS trades'') or Hybrid Opening System (''HOSS''), fair market value shall be the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s).

(2) Obvious Quantity Error: An obvious error in the quantity term will be deemed to occur when the transaction size exceeds the responsible broker or dealer's average disseminated size over the previous four hours by a factor of five (5) times. The quantity to which a transaction shall be adjusted from an obvious quantity error shall be the responsible broker or dealer's average disseminated size over the previous four trading hours (which may include the previous trading day).

(3) Verifiable Disruptions or Malfunctions of Exchange Systems: Trades arising out of a ''verifiable disruption or malfunction'' in the use or operation of any Exchange automated quotation, dissemination, execution, or communication system may either be nullified or adjusted by Trading Officials.

(4) Erroneous Print in Underlying: A trade resulting from an erroneous print disseminated by the underlying market which is later cancelled or corrected by that underlying market may be adjusted or nullified. In order to be adjusted or nullified, however, the trade must be the result of an erroneous print that is higher or lower than the average trade in the underlying security during a two-minute period before and after the erroneous print by an amount at least five times greater than the average quote width for such underlying security during the same period.

For purposes of this Rule, the average trade in the underlying security shall be determined by adding the prices of each trade during the four minute time period referenced above (excluding the trade in question) and dividing by the number of trades during such time period (excluding the trade in question). For purposes of this Rule, the average quote width shall be determined by adding the quote widths of each separate quote during the four minute time period referenced above (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question).

(5) Erroneous Quote in Underlying: A trade resulting from an erroneous quote in the underlying security may be adjusted or nullified. An erroneous quote occurs when the underlying security has a width of at least $1.00 and has a width at least five times greater than the average quote width for such underlying security on the primary market during the time period encompassing two minutes before and after the dissemination of such quote.

(6) Trades Below Intrinsic Value: An obvious pricing error will be deemed to occur when the transaction price of an equity option is more than $0.10 below the intrinsic value of the same option (an option that trades at its intrinsic value is sometimes said to trade at ''parity''). Paragraph (6) shall not apply to transactions occurring during the last two minutes of the trading day (which is typically 3:00:01 p.m. (CT) to 3:02 p.m. (CT)) on days with regular trading hours).

(i) Definition of Intrinsic Value: For purposes of this Rule, the intrinsic value of an equity call option equals the value of the underlying stock (measured from the bid or offer as described below) minus the strike price, and the intrinsic value of an equity put option equals the strike price minus the value of the underlying stock (measured from the bid or offer as described below), provided that in no case is the intrinsic value of an option less than zero. In the case of purchasing call options and selling put options, intrinsic value is measured by reference to the bid in the underlying security, and in the case of purchasing put options and selling call options, intrinsic value is measured by reference to the offer in the underlying security.

(7) No Bid Series: Electronic transactions in series quoted no bid at a nickel (i.e., $0.05 offer) will be nullified provided at least one strike price below (for calls) or above (for puts) in the same options class was quoted no bid at a nickel at the time of execution.

(b) Procedures for Reviewing Transactions

(1) Notification: Any member or person associated with a member that believes it participated in a transaction that may be adjusted or nullified in accordance with paragraph (a) must notify any Trading Official promptly but not later than fifteen (15) minutes after the execution in question. For transactions occurring after 2:45 p.m. (CST), notification must be provided promptly but not later than fifteen (15) minutes after the close of trading of that security on CBOE. Absent unusual circumstances, Trading Officials shall not grant relief under this Rule unless notification is made within the prescribed time periods. In the absence of unusual circumstances, Trading Officials (either on their own motion or upon request of a member) must initiate action pursuant to paragraph (a)(3) above within sixty (60) minutes of the occurrence of the verifiable disruption or malfunction. When Trading Officials take action pursuant to paragraph (a)(3), the members involved in the transaction(s) shall receive verbal notification as soon as is practicable.

(2) Review and Determination: Once a party to a transaction has applied to a Trading Official for review, the transaction shall be reviewed and a determination rendered, unless both parties to the transaction agree to withdraw the application for review prior to the time a decision is rendered. Absent unusual circumstances (e.g., a large number of disputed transactions arising out of the same incident), Trading Officials must render a determination within sixty (60) minutes of receiving notification pursuant to paragraph (b)(1) above. If the transaction(s) in question occurred after 2:30 p.m., Trading Officials shall have until 9:30 a.m. the following morning to render a determination. Trading Officials shall promptly provide verbal notification of a determination to the members involved in the disputed transaction and to the control room.

(c) Adjustments

Unless otherwise specified in Rule 24.16(a)(1)–(6), transactions will be adjusted provided the adjusted price does not violate the customer's limit price. Otherwise, the transaction will be nullified. With respect to 24.16(a)(1)–(5), the price to which a transaction shall be adjusted shall be the National Best Bid (Offer) immediately following the erroneous transaction with respect to a sell (buy) order entered on the Exchange. For ROS or HOSS transactions, the price to which a transaction shall be adjusted shall be based on the first non-erroneous quote after the erroneous transaction on CBOE. With respect to 24.16(a)(6), the transaction shall be adjusted to a price that is $0.10 under parity.

(d) Review by the Appeals Committee

A member affected by a determination made under this rule may appeal such determination to the Appeals Committee, in accordance with Chapter XIX of the Exchange's rules. For purposes of this Rule, a member must be aggrieved as described in Rule 19.1. Notwithstanding any provision in Rule 19.2 to the contrary, a request for review must be made in writing (in a form and manner prescribed by the Exchange) no later than the close of trading on the next trade date after the member receives verbal notification of such determination by Trading Officials.

(e) Negotiated Trade Nullification

A trade may be nullified if the parties to the trade agree to the nullification. When all parties to a trade have agreed to a trade nullification one party must promptly disseminate cancellation information in OPRA format.

Interpretations and Policies * **

.01 Applicability: Trading Officials may also allow for the execution of ROS trades (and assign those trades to participating ROS market-makers) that were not executed on the opening but that should have been executed had ROS opened the series at the non-erroneous quote. The Exchange will endeavor to notify its members as soon as practicable after the correction of an erroneous print and will indicate that this may result in the adjustment of trades executed pursuant to ROS. The only trades that will be adjusted are those that were executed on the opening or those that should have executed on the opening. All adjustments will be made during the day when the correction of the erroneous print occurred.

.02 Trading Officials: The term ''Trading Officials'' means two Exchange members designated as Floor Officials and one member of the Exchange's trading floor liaison (TFL) staff.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's obvious error rule (CBOE Rule 6.25) establishes guidelines for the adjustment and nullification of transactions in both equity and index options. The Rule defines what constitutes an obvious error, provides an objective process members must follow to seek relief under the rule, and provides an appeals process for members seeking to challenge an initial determination. The Exchange's Rule operates completely independent of the other options exchanges' obvious error rules and is structured differently. In other words, transactions that might qualify as an obvious error on one options exchange might not qualify as such on CBOE, or vice versa. Because of this disparity and the potential for confusion, customers that routinely send orders to multiple exchanges have indicated that a more uniform obvious error pricing rule with respect to equity options would be beneficial to them. Accordingly, in response to the requests of its customers, CBOE proposes to adopt an obvious error pricing rule for equity options that is structured more like that of other options exchanges. The Exchange intends to keep its current obvious error for index options as well as options on ETFs and HOLDRS.[7]

a. *Revised Rule CBOE 6.25, Nullification and Adjustment of Equity Options Transactions*

Under CBOE's current obvious error rule, there are seven types of transactions that qualify as obvious errors. The Exchange proposes to reduce this number to four, as described below.

i. *Obvious Price Errors*

The Exchange proposes to adopt an obvious price error rule that operates almost identically to that of the International Securities Exchange (''ISE'') Rule 720, with minor differences. As such, an obvious pricing error will be deemed to have occurred when the execution price of an electronic transaction (not open outcry) varies from the Theoretical Price[8] by a requisite amount.[9] When an obvious price error occurs, CBOE either will adjust or nullify the transaction in accordance with the following principles:

Transactions Between CBOE Market Makers (''MMs''): Transactions between CBOE MMs will be adjusted to the Theoretical Price plus/minus an ''adjustment penalty'' of either $0.15 or $0.30. Erroneous buy transactions will be adjusted to Theoretical Price plus an adjustment penalty of either $0.15 if Theoretical Price is below $3 or $0.30 if the Theoretical Price is $3 or higher. Conversely, erroneous sell transactions will be adjusted to Theoretical Price minus an adjustment penalty of either $0.15 if Theoretical Price is below $3 or $0.30 if Theoretical Price is $3 or higher. Both parties to the transaction may agree to adjust to a different price or nullify the transaction altogether provided they do so within fifteen minutes of being notified by trading officials that an obvious error occurred.

Transactions where One Party is not a CBOE MM: Where at least one party is not a CBOE MM, the transaction will be nullified by trading officials unless both parties agree to an adjustment price for the transaction within thirty minutes of being notified by trading officials of the obvious error. This is identical to the ISE Rule.

ii. *No Bid Series*

This provision, which is identical to current paragraph (a)(7) of CBOE Rule 6.25, is renumbered as paragraph (a)(2) of CBOE Rule 6.25.

iii. *Verifiable Disruptions or Malfunctions of Exchange Systems*

This provision, which is identical to current paragraph (a)(3) of CBOE Rule 6.25, will apply to transactions occurring electronically or in open outcry. For those transactions qualifying for adjustment, there will be no adjustment penalty. Accordingly, transactions between CBOE MMs will be adjusted to the Theoretical Price. Transactions involving at least one CBOE non-member will be nullified unless the parties otherwise agree.

iv. *Erroneous Print in Underlying*

The Exchange proposes to amend paragraph (a)(4) of CBOE Rule 6.25 to clarify that a trade resulting from an erroneous print disseminated by the underlying market that is later cancelled or corrected by that underlying market may only be nullified. The current Rule allows these transactions to be adjusted or nullified.

b. *Current Provisions Proposed for Elimination*

The Exchange proposes to eliminate current paragraphs (a)(2) (Obvious Quantity Error), (a)(5) (Erroneous Quote in Underlying), and (a)(6) (Trades Below Intrinsic Value) of CBOE Rule 6.25. Changes to the pricing error section, paragraph (a)(1) (Obvious Price Error), render these provisions unnecessary.

c. *Procedures for Reviewing Transactions*

The Exchange retains its current procedures for reviewing transactions, with two minor modifications. First, the Exchange proposes to require notification within 15 minutes of the transaction in question, regardless of the time it occurred. Currently, for transactions occurring after 2:45 p.m. (CST), notification must be provided no later than fifteen (15) minutes after the close of trading of that security on CBOE. Second, the current Rule gives trading officials until 9:30 a.m. the following day to render determinations for transactions occurring after 2:30 p.m. Because this creates significant overnight exposure risk for both parties, the Exchange proposes to require trading officials to render a determination within 60 minutes of notification, regardless of the time the transaction occurred.[10]

Currently, the process for appealing determinations regarding obvious errors is governed by paragraph (d) of CBOE Rule 6.25, which provides for an appeals process under Chapter XIX of the Exchange's rules. The Exchange proposes to amend this process and create an Obvious Error Panel that will review decisions rendered by trading officials. The rules creating and governing the Obvious Error Panel are substantially similar to ISE Rule 720. Regarding the composition of the panel,

[7] *See* proposed CBOE Rule 24.16, which is a identical in substance to current CBOE Rule 6.25, except that it is limited in application to index options and options on ETFs and HOLDRs.

[8] The Exchange proposes to use a similar definition for Theoretical Price as does the ISE. For multiply traded options, Theoretical Price will be the last bid (offer) price with respect to an erroneous sell (buy) transaction just prior to the trade that is disseminated by the competing options exchange with the most liquidity in that class over the preceding two calendar months. If there are no quotes for comparison purposes, trading officials shall determine Theoretical Price. For transactions occurring as part of the Rapid Opening System or Hybrid Opening System, Theoretical Price shall be the first quote after the transaction(s) in question that does not reflect the erroneous transaction(s).

[9] The requisite amount is: $0.25 for options below $2, $0.40 for options priced from $2 to $5, $0.50 for options priced above $5 to $10, $0.80 for options priced above $10 to $20, and $1.00 for options priced above $20.

[10] ISE also requires same-day determinations regardless of the time the transaction occurred. CBOE represents that trading officials will remain on Exchange premises until a determination is rendered.

CBOE, in addition to including one Exchange trading floor liaison, will require that the panel be comprised of an equal number of CBOE MMs and floor broker members. However, while determinations rendered by ISE's Obvious Error Panel constitute final exchange action, CBOE proposes to allow parties to appeal decisions of its Obvious Error Panel in accordance with the procedures set forth in Chapter XIX of CBOE's rules.

2. Statutory Basis

CBOE represents that the filing provides objective guidelines for the nullification or adjustment of transactions executed at clearly erroneous prices. Moreover, the proposed rule provides more uniformity regarding obvious pricing errors, which will serve to benefit customers. For these reasons, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.[11] Specifically, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[12] that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, 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 not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Furthermore, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. Consequently, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that the proposal to amend CBOE's obvious error rule provisions is substantially similar to provisions contained in ISE Rule 720,[15] and incorporates certain aspects of current CBOE Rule 6.25, which the Commission previously approved. Thus, the Commission does not believe that the proposed rule change raises any new regulatory issues. In addition, the Commission believes that waiver of the 30-day operative delay would enable the Exchange to implement the proposal as quickly as possible, and thereby provide for greater uniformity with respect to obvious error determinations for options transactions. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[16]

At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

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–2004–83 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–83. 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 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–2004–83 and should be submitted on or before January 18, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–28276 Filed 12–27–04; 8:45 am]

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[11] 15 U.S.C. 78(f)(b).

[12] 15 U.S.C. 78(f)(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] *See* Securities Exchange Act Release No. 48097 (June 26, 2003), 68 FR 39604 (July 2, 2003) (approving ISE's obvious error rule).

[16] For 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. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50892; File No. SR–CHX–2004–26]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the Chicago Stock Exchange, Inc. Relating to the Demutualization of the Chicago Stock Exchange, Inc.

December 20, 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 24, 2004, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. On December 15, 2004, the CHX filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes a series of changes to the CHX's corporate structure to allow for the demutualization of the CHX. To effect the demutualization, the CHX proposes to create a new Delaware for-profit stock holding company, CHX Holdings, Inc. (''CHX Holdings'') that will become the parent company and sole shareholder of the CHX. The CHX will become a Delaware for-profit stock corporation that will continue to engage in the business of operating a national securities exchange registered under Section 6 of the Act.[4]

The proposed rule change for implementing the demutualization, including: (1) The CHX's revised rules; (2) the CHX's revised Certificate of Incorporation; (3) the CHX's revised Bylaws; (4) the Certificate of Incorporation for CHX Holdings; and (5) the Bylaws of CHX Holdings, are collectively referred to herein as the ''proposed rule change'' and are available for viewing on the Commission's Web site, *http://www.sec.gov,* and at the CHX and the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the CHX revised several references in the proposal to reflect its members' November 2004 vote to approve the proposed demutualization.

[4] 15 U.S.C. 78f.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this submission, the Exchange proposes a series of changes to the Exchange's corporate structure that will allow for the demutualization of the Exchange.

a. Description of the Demutualization Transaction

The CHX proposes to demutualize by creating a new Delaware for-profit stock holding company, CHX Holdings, which will become the parent company of the CHX.[5] The CHX itself will become a Delaware for-profit stock corporation and will continue to engage in the business of operating a national securities exchange registered under Section 6 of the Act.[6]

On the effective date of the demutualization (''Effective Date''), each person or entity that owns a membership in the CHX will receive 1,000 shares of common stock of CHX Holdings for each membership that the person or entity owns, representing all of the issued and outstanding shares of CHX Holdings. Following the demutualization, persons and firms who have been qualified for membership under Articles 1, 2, or 3 of the Exchange's current rules and, as a result, have access to the Exchange's trading floor and other facilities (''qualified trading members'') will separately receive CHX trading permits entitling them to maintain the same trading access to the CHX that they currently enjoy.

Shares of CHX Holdings common stock and CHX trading permits will not be tied together. As a result, following the demutualization, former CHX members will be able to sell the shares of CHX Holdings common stock they receive in the demutualization, subject to the applicable restrictions described below, while still retaining any CHX trading permits that they were issued. Other persons who satisfy regulatory requirements will also be able to obtain CHX trading permits without regard to whether they are stockholders of CHX Holdings. Persons who hold CHX trading permits in the demutualized Exchange will be called ''participants'' or ''participant firms.''

b. Reasons for the Proposed Demutualization

There are several benefits that the Exchange believes may result from the demutualization of the Exchange. Perhaps the most important of these benefits is that the creation of CHX Holdings as a for-profit stock corporation may present opportunities to enter into strategic alliances involving the issuance of stock to its partners in such transactions. The Exchange believes that demutualization may increase the likelihood that these kinds of opportunities may be presented to the CHX, which could be beneficial to the stockholders of CHX Holdings.

The Exchange believes that another potential benefit to demutualizing is that converting the CHX from a not-for-profit corporation to a for-profit subsidiary of a for-profit holding company is likely to focus the business of the CHX more sharply on its profitability, which in turn should enhance the value of the Exchange to its owners. Additionally, by reorganizing the CHX into a holding company structure, there should be greater flexibility for the new holding company to acquire or expand into other businesses, as well as to dispose of certain business units if that should appear to be in the best interest of the enterprise and the stockholders of CHX Holdings.

The Exchange remains committed to its role as a national securities exchange and does not believe that a change to a for-profit institution will undermine its responsibilities for regulating its marketplace. Indeed, as further described below, the Exchange has

[5] In order to accomplish the demutualization, the CHX, which currently is a Delaware non-stock corporation, will establish two new Delaware stock for-profit corporations: CHX Holdings, a direct and wholly-owned subsidiary of the CHX; and CHX Merger Sub, Inc. (''CHX Merger Sub''), a direct and wholly-owned subsidiary of CHX Holdings. Pursuant to an agreement and plan of merger, CHX Merger Sub will merge with and into the CHX, with the CHX surviving the merger as a Delaware for-profit stock corporation that is a direct and wholly-owned subsidiary of CHX Holdings.

[6] 15 U.S.C. 78f. Following the demutualization, earnings of the CHX not retained in its business will be distributed to its parent, CHX Holdings, and CHX Holdings will be authorized to pay dividends to the stockholders of CHX Holdings as and when they are declared by the Board of Directors of CHX Holdings.

proposed specific provisions in the Bylaws of both CHX Holdings and the CHX that reinforce the ability of the Exchange to perform its self-regulatory functions.

c. Summary of Proposed Rule Change

The proposed rule change is outlined below.[7] In general, the proposed rule change consists of: organizational changes to the CHX Certificate of Incorporation and Bylaws, reflecting the change in corporate form; governance changes that will reduce the size of the CHX Board and modify certain provisions governing CHX committees; and membership rule changes that are necessary to implement the new CHX trading permit structure, which will replace the existing structure of owning and leasing Exchange memberships as a basis for trading rights. The proposed rule change also includes the CHX Holdings Certificate of Incorporation and Bylaws. CHX Holdings will, on the Effective Date of the demutualization transaction, become the Exchange's parent company. The Exchange is not proposing any significant change to its existing operational and trading structure in connection with the demutualization.[8]

(1) *Governance Structure of the Demutualized CHX.*

(a) *CHX Holdings.* As noted above, following the demutualization, CHX Holdings will be a for-profit stock corporation. All of the issued and outstanding stock of CHX Holdings (450,000 shares of common stock) initially will be owned by the persons or entities that owned memberships in the Exchange.[9]

(i) *Board of Directors.* The Board of Directors of CHX Holdings (''CHX Holdings Board'') will consist of between 10 and 16 persons, as determined by the CHX Holdings Board from time to time.[10] Initially, the CHX Holdings Board will have 14 directors, who will be selected by the Chairman, Vice Chairman, and Chief Executive Officer of the CHX from among the persons currently serving on the Exchange's Board of Governors.[11] The directors of CHX Holdings will be divided into three classes, which will be as nearly equal in number as the total number of directors then constituting the entire CHX Holdings Board. The directors of CHX Holdings will serve staggered three-year terms, with the term of office of one class expiring each year.[12]

The Chairman of the CHX Holdings Board will be elected by the CHX Holdings Board from among the directors on the CHX Holdings Board.[13] He may serve as the Chief Executive Officer of CHX Holdings but may have no other office in CHX Holdings. The Vice Chairman of the CHX Holdings Board will be nominated by the Chairman of the CHX Holdings Board and elected by the CHX Holdings Board.[14] He may hold no other office with CHX Holdings. Neither the Chairman nor the Vice Chairman of CHX Holdings will be subject to any limit on the number of terms that he may serve. Each year, the Nominating and Governance Committee of CHX Holdings will nominate directors for the class of directors standing for election at the CHX Holdings annual meeting of stockholders that year.[15] Each CHX Holdings stockholder will be entitled to one vote for each share of stock owned by that stockholder.[16] At each annual meeting of the stockholders of CHX Holdings at which a quorum is present, the individuals receiving a plurality of the votes cast will be elected directors of CHX Holdings.

In most cases, vacancies on the CHX Holdings Board will be filled by persons nominated by the Chairman and Vice Chairman of CHX Holdings and elected by the CHX Holdings Board.[17] If the vacancy has resulted from removal from office for cause pursuant to stockholder vote, however, that vacancy may be filled by a vote of the stockholders of CHX Holdings at the same meeting at which that director is removed. Any director chosen to fill a vacancy or newly-created seat may serve only until the next annual meeting of CHX Holdings stockholders, at which time a director will be elected by the stockholders to serve out the remaining portion of the term of the class to which the director belongs.

(ii) *Officers of CHX Holdings.* The day-to-day business affairs of CHX Holdings will be managed by the Chief Executive Officer of CHX Holdings, who will be appointed by the CHX Holdings Board.[18] The Chief Executive Officer of CHX Holdings may appoint such other officers as he believes are necessary. These officers will have the responsibilities and authority set out in the CHX Holdings Bylaws or given to them by the Chief Executive Officer of CHX Holdings. As an initial matter, the Chief Executive Officer of the CHX will act as the Chief Executive Officer of CHX Holdings and will appoint, as officers of CHX Holdings, such officers of the CHX as he believes are necessary to carry out the business of CHX Holdings.

(iii) *CHX Holdings Committees.* The CHX Holdings Board will have several standing committees.[19] The CHX Holdings Nominating and Governance Committee, which will consist of six directors, will be appointed by the CHX Holdings Board.[20] The Executive, Audit, and Compensation Committees of CHX Holdings will be appointed by the Chairman and Vice Chairman of the CHX Holdings Board, subject to the approval of the CHX Holdings Board.[21] Other committees will be appointed by the Vice Chairman of CHX Holdings, subject to the CHX Holdings Board's approval. Each committee will have the authority and responsibilities as may be determined, from time to time, by the CHX Holdings Board.

(b) *The CHX.* As noted above, following demutualization, the CHX will be a for-profit stock corporation. All of its stock will be held by CHX Holdings.[22]

(i) *Board of Directors.* The CHX Board of Directors (''CHX Board'') will consist of between 10 and 16 persons, as

[7] Also outlined below are those provisions of the proposed CHX Holdings Certificate of Incorporation and Bylaws that are directly related to the Exchange's self-regulatory function.

[8] The Exchange, however, is proposing certain revisions to the CHX rules which will delete obsolete rule provisions. These changes are summarized below under ''Summary of Rule Change Not Related to Demutualization.''

[9] *See* proposed Article Fourth of the CHX Holdings Certificate of Incorporation. CHX Holdings will have an additional 300,000 shares of authorized, but not issued, common stock and 25,000 shares of authorized, but not issued, preferred stock.

[10] *See* proposed Article Sixth, Section (b) of the CHX Holdings Certificate of Incorporation and proposed Article II, Section 2 of the CHX Holdings Bylaws.

[11] *See* proposed Article Sixth, Section (g) of the CHX Holdings Certificate of Incorporation.

[12] A CHX Holdings director may serve for any number of terms, consecutive or otherwise, but no person will be eligible for election or re-election as a director if such person has reached the age of 71.

[13] *See* proposed Article II, Section 4 of the CHX Holdings Bylaws.

[14] *See* proposed Article II, Section 5 of the CHX Holdings Bylaws.

[15] *See* proposed Article II, Section 3 of the CHX Holdings Bylaws.

[16] *See* proposed Article IV, Section 11 of the CHX Holdings Bylaws.

[17] *See* proposed Article Sixth, Section (h) of the CHX Holdings Certificate of Incorporation and proposed Article II, Section 6 of the CHX Holdings Bylaws. The Chairman and Vice Chairman of CHX Holdings will be required to provide the names of nominees to fill vacancies to the CHX Holdings Board, in writing, no later than five business days before the date on which the CHX Holdings Board will be asked to vote to fill the vacancies.

[18] *See* proposed Article VI, Section 4 of the CHX Holdings Bylaws.

[19] *See* proposed Article V, Section 1 of the CHX Holdings Bylaws.

[20] *See* proposed Article II, Section 3 of the CHX Holdings Bylaws.

[21] *See* proposed Article V of the CHX Holdings Bylaws.

[22] *See* proposed Article Fourth of the CHX Certificate of Incorporation.

determined by the CHX Board from time to time.[23] Initially, the CHX Board will have 14 directors, who will be selected by the Chairman, Vice Chairman, and Chief Executive Officer of the CHX from among the persons currently serving on the Exchange's Board of Governors. The directors will be divided into three classes, which will be as nearly equal in number as the total number of directors then constituting the entire CHX Board permits. The CHX's directors will serve staggered three-year terms, with the term of office of one class expiring each year.[24]

The CHX Board will be composed of the Exchange's Chief Executive Officer, persons who qualify as ''participant directors'' and persons who qualify as ''public directors.''[25] One-half of the members of the CHX Board must be public directors. The remaining directors (other than the Chief Executive Officer) must be participant directors.[26] The CHX Board's initial directors will include the Chief Executive Officer, seven public directors and six participant directors of the CHX.

The Chairman of the CHX Board will be elected by the CHX Board and will be either the Chief Executive Officer of the CHX or one of the public directors on the CHX Board.[27] The Vice Chairman of the CHX Board will be elected by the participant directors from among the participant directors on the CHX Board.[28] Neither the Chairman nor the Vice Chairman of the CHX may hold another office in the Exchange, nor will he be subject to any limit on the number of terms that he may serve.

Each year, the Nominating and Governance Committee of the CHX will nominate directors for the class of directors standing for election at the annual meeting of the CHX stockholders that year.[29] CHX Holdings, as sole stockholder of the CHX, will have the sole right and the obligation to vote for the directors of the CHX nominated by the CHX Nominating and Governance Committee.[30]

Because, in the demutualized CHX, the Exchange's participants are not stockholders of the CHX, they cannot directly elect members of the CHX Board. As described below, the Exchange has set up a procedure that allows participants to be involved in the selection of candidates to fill participant director slots on the CHX Board. This procedure is designed to resemble the process currently used to nominate persons to the CHX's Board of Governors.[31] Under the new procedures, the CHX Nominating and Governance Committee will hold two open meetings with CHX participants for the purpose of receiving recommendations of candidates for election to the positions of participant directors. The CHX Nominating and Governance Committee's initial candidates for nomination will be announced to CHX participants, who will then have the opportunity to identify additional candidates for nomination to those positions by submitting a petition signed by at least ten participants.[32] If no petitions are submitted within the time frame prescribed by the CHX Bylaws, the CHX Nominating and Governance Committee will nominate the candidates it initially identified. If one or more valid petitions are submitted, the participants will be allowed to vote on the entire group of potential candidates. Each participant will have one vote, per trading permit, with respect to each participant director position that is to be filled, and the persons with the highest number of votes will be nominated by the CHX Nominating and Governance Committee.[33] As noted above, CHX Holdings, as sole stockholder of the CHX, will have the sole right and the obligation to vote for the directors nominated by the CHX Nominating and Governance Committee. The Exchange believes that this process provides a fair opportunity for the participants in the Exchange—its ''members'' under the Act—to participate in the selection of the Exchange's directors.

In most cases, vacancies on the CHX Board will be filled by persons nominated by the Chairman and Vice Chairman of the CHX and elected by the CHX Board.[34] As with CHX Holdings, if the vacancy has resulted from removal from office for cause pursuant to stockholder vote, however, that vacancy may be filled by a vote of the CHX stockholders at the same meeting at which that director is removed. Any director chosen to fill a vacancy or newly-created seat may serve only until the next annual meeting of the CHX stockholders, at which time a director identified by the CHX Nominating and Governance Committee will be elected by the CHX stockholders to serve out

[23] *See* proposed Article Fifth of the CHX Certificate of Incorporation and proposed Article II, Section 2 of the CHX Bylaws. The CHX's current Board of Governors consists of 24 governors.

[24] Under the proposed CHX Bylaws, a CHX director may serve for any number of terms, consecutive or otherwise, but no person will be eligible for election or re-election as a director if such person has reached the age of 71. These provisions are somewhat different from the Exchange's current Bylaws, which contain restrictions on the number of terms that CHX governors may serve and do not place any age restriction on member governors. The Exchange believes that it is appropriate to remove term restrictions to ensure that persons who would be interested in serving on the CHX Board are not required to leave at the end of a particular number of years, particularly as the number of member firms on the Exchange (and the number of persons who would be eligible to serve on the CHX Board) have decreased over the past several years.

[25] *See* proposed Article Fifth, Section (c) of the CHX Certificate of Incorporation and proposed Article II, Section 2(b) of the CHX Bylaws. A ''public director'' is a director who (i) is not a participant or an officer, managing member, partner or employee of an entity that is a participant, (ii) is not an employee of the CHX, CHX Holdings or any of their affiliates, (iii) is not a broker or dealer or an officer or employee of a broker or dealer, or (iv) does not have any other material business relationship with the CHX, CHX Holdings, or any of their affiliates or any broker or dealer. A ''participant director'' is a director who is a CHX participant or an officer, managing member or partner of an entity that is a CHX participant. The proposed definition of public director will replace the somewhat confusing definitions of non-industry governor and public governor that are set out in the Exchange's current governing documents.

[26] This composition is consistent with the composition of the Exchange's current Board of Governors, which consists of 12 non-industry governors (all of whom currently qualify as public governors), ten member governors (of which four must be on-floor governors and four must be off-floor governors) the Vice Chairman (an on-floor member firm representative) and the Chief Executive Officer.

[27] *See* proposed Article II, Section 4 of the CHX Bylaws. Under the Exchange's current Bylaws, the CHX Chairman could also be an off-floor member governor. The Exchange believes that it is consistent with principles of good governance to ensure that the Chairman of the Exchange is not one of the members regulated by the Exchange.

[28] *See* proposed Article II, Section 5 of the CHX Bylaws. Currently, the Exchange's Vice Chairman is directly elected by the Exchange's members.

[29] *See* proposed Article II, Section 3 of the CHX Bylaws.

[30] CHX Holdings will sign an agreement with the CHX confirming its obligation to vote for the candidates nominated through the process set out in the proposed CHX Bylaws.

[31] *See* proposed Article II, Section 3 of the CHX Bylaws.

[32] Under the Exchange's current Bylaws, its members have a similar ability to add candidates to a ballot through the submission of petitions signed by ten CHX members.

[33] As noted below, no participant or participant firm is allowed to hold more trading permits than are necessary to the conduct of business on the Exchange. All trading permits must be held by an active participant or must be held by an active participant firm, where the participant firm has assigned an active participant as its nominee. *See* proposed CHX Rules, Article II, Rule 2(e).

[34] See proposed Article Fifth, Section (g) of the CHX Certificate of Incorporation and proposed Article II, Section 6 of the CHX Bylaws. The Chairman and Vice Chairman of the CHX will be required to provide the names of nominees to fill vacancies to the CHX Board, in writing, no later than five business days before the date on which the CHX Board will be asked to vote to fill the vacancies. The Exchange believes that having both its Chairman (a public director or the Chief Executive Officer) and its Vice Chairman (a participant director) nominate persons to fill vacancies on the CHX Board provides a well-balanced approach to this important responsibility.

the remaining portion of the term of the class to which the director belongs.

(ii) *Officers of the CHX.* The day-to-day business affairs of the CHX will continue to be managed by its Chief Executive Officer, who is appointed by the CHX Board.[35] The Chief Executive Officer of the CHX will continue to have the authority to appoint such other officers as he believes are necessary. These officers will have the responsibilities and authority set out in the CHX Bylaws or given to them by the Chief Executive Officer of the CHX.[36]

(iii) *CHX Committees.* The CHX Board will have several standing committees, which are, for the most part, the same as the committees currently in place for the CHX.[37]

(A) The CHX Nominating and Governance Committee, which will consist of three participant directors and three public directors, will be appointed by the CHX Board.[38] This committee will be responsible for nominating candidates for the position of director and periodically reviewing the organization and governance structure of the Exchange.[39]

(B) The CHX's Executive, Audit, Finance, and Compensation Committees will be appointed by the Chairman and Vice Chairman of the CHX Board, subject to the approval of the CHX Board.[40]

(C) The CHX's Regulatory Oversight Committee will be appointed by the Vice Chairman of the CHX Board, subject to the approval of the public directors on the CHX Board.[41]

(D) The CHX's Judiciary Committee will continue to be appointed by the Chief Executive Officer of the CHX; and

(E) Other committees, including the newly-formed Participant Advisory Committee of the CHX, will be appointed by the Vice Chairman of the CHX, subject to the CHX Board's approval.[42] Each committee will have the authority and responsibilities as may be determined, from time to time, by the CHX Board.

(2) *Provisions Relating to, or Arising from, the Self-Regulatory Functions of the CHX.* The proposed Bylaws of both CHX Holdings and the CHX contain specific provisions relating to the self-regulatory function of the CHX.

(a) *CHX.* For the CHX, these provisions address the following issues:

(i) *Management of the CHX.* The CHX Board must consider applicable requirements under Section 6(b) of the Act[43] in connection with the management of the Exchange.[44]

(ii) *Confidentiality.* Meetings of the CHX Board and of its committees that pertain to the self-regulatory function of the Exchange or to the structure of the market which the Exchange regulates must be closed to persons who are not members of the CHX Board or CHX officers, staff, counsel, or other specifically identified persons.[45] The CHX books and records that relate to the Exchange's self-regulatory function must be kept confidential and must not be used for non-regulatory purposes.[46]

(iii) *Maintenance of books and records.* All of the books and records of the CHX must be maintained at a location within the United States.[47]

(iv) *Regulatory fees and penalties.* Any revenues received by the CHX from regulatory fees or penalties must be applied to fund the legal and regulatory operations of the Exchange and must not be used to pay dividends.[48]

[35] *See* proposed Article V of the CHX Bylaws.

[36] Although these provisions are not measurably different from the Exchange's current Bylaws, the proposed changes to Article V of the CHX Bylaws do contain two new provisions relating to officer compensation and term of office. Consistent with the existing CHX Rules, proposed Article V, Section 2 of the CHX Bylaws confirms that the CHX Chief Executive Officer's compensation is determined by the CHX Compensation Committee and that salaries of other officers are fixed by the Chief Executive Officer of the CHX, in consultation with the Compensation Committee of the CHX. Proposed Article V, Section 3 of the CHX Bylaws confirms that officers hold office until a successor is appointed or until the officer's death, resignation, or removal. Other changes in proposed Article V of the CHX Bylaws move references to the Exchange's Chairman and Vice Chairman to proposed Article II (Directors) to confirm that these persons are not officers of the Exchange and set out the general authority of Exchange officers.

[37] Information about the composition and responsibilities of the Exchange's committees is contained in proposed Article IV of the Exchange's rules.

[38] Under the Exchange's current rules, the Exchange's Nominating Committee consists of three member representatives (including one on-floor representative and one off-floor representative) and three non-industry persons. The member representatives currently are elected by the Exchange's members; the non-industry representatives are appointed by the Exchange's Board of Governors. The Exchange believes that it is appropriate to adopt a more streamlined approach to the selection of its Nominating and Governance Committee when it demutualizes and thus has chosen the process set out in the amended CHX Bylaws.

[39] In making this proposal, the Exchange seeks to combine the work of its current Nominating Committee with the work performed by its current (and separate) Organization and Governance Committee. The Exchange believes that it will be more efficient to have a single committee address these issues.

[40] The role and composition of these committees are similar, but not identical, to the structure under the current CHX rules. For example, under the revised CHX rules, a majority (not just 50%) of the members of the CHX's Audit and Compensation Committees would be public directors. In addition, the description of the CHX Audit Committee's role would be updated to confirm that the committee (not the CHX Board) has the direct responsibility to retain and oversee the work of the independent public accountant that audits the Exchange's financial statements. Other changes include a decision to streamline the requirements for CHX Executive Committee members by removing the requirement in the Exchange's current Bylaws that committee members be chosen (a) with a view to providing representation to the various geographical areas in which there are member organizations that support the Exchange; and (b) with a view to having persons on the committee who are interested in and knowledgeable about the Exchange's business operations and the securities industry as a whole. These requirements appear to have been included in the Exchange's Bylaws at a time when securities industry participants had businesses that were more local in scope and when persons might not have had a particular interest in serving as public directors on the CHX's Board of Governors. Today, the businesses of many of the Exchange's members are national in scope and the Exchange anticipates that all of its public directors will be interested in learning more about the Exchange's operations and the workings of the securities industry as a whole.

[41] The CHX represents that the composition, responsibilities, and appointment mechanism associated with this committee are consistent with the requirements relating to this committee that are set out in the CHX's September 30, 2003, settlement order with the Commission. *See In the Matter of the Chicago Stock Exchange*, Securities Exchange Act Release No. 48566 (September 30, 2003) (Admin. Proc. File No. 3–11282) (Order Instituting Public Administrative Proceedings Pursuant to Sections 19(h) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Censure, a Cease-and-Desist Order and Other Relief) (''CHX Settlement Order'').

[42] The CHX Participant Advisory Committee will be composed entirely of participants of the Exchange. It will, among other things, recommend rules for adoption by the CHX Board and advise the CHX management regarding enhancements to the Exchange's trading facilities and other matters that affect participants. This committee is designed to provide participants with a formal opportunity to share their concerns and ideas with the CHX management.

[43] 15 U.S.C. 78f(b). Section 6(b) of the Act requires, among other things, that the Exchange's rules must be designed to protect investors and the public interest. It also requires that the Exchange be organized so that it can carry out the purposes of the Act and to enforce compliance by its participants with the Act, the rules and regulations under that Act, and the rules of the Exchange.

[44] *See* proposed Article X, Section 1 of the CHX Bylaws.

[45] *See* proposed Article X, Section 2 of the CHX Bylaws. These requirements are designed to ensure that representatives of CHX Holdings or of other corporations affiliated with the Exchange do not improperly involve themselves in specific disciplinary or other regulatory matters being handled by the Exchange. These requirements and the requirements relating to the confidentiality of records are not, however, designed to prevent the Exchange from sharing with CHX Holdings the type of information about the Exchange's business that would ordinarily be shared with a parent corporation, including information relating to the Exchange's compliance with the CHX Settlement Order and all applicable laws; any reports from the Commission or from others evaluating the Exchange's self-regulatory programs; and information about the trading activities and business strategies of the Exchange's participants.

[46] *See* proposed Article X, Section 3 of the CHX Bylaws.

[47] *See* proposed Article X, Section 4 of the CHX Bylaws.

[48] *See* proposed Article X, Section 5 of the CHX Bylaws. Regulatory penalties that are intended to

Continued

(v) *Restrictions on ownership*. Although there are no percentage-based restrictions on the ownership of the CHX, the proposed CHX Certificate of Incorporation confirms that CHX Holdings is the sole stockholder of the CHX.[49] Changes to the CHX Certificate of Incorporation cannot take effect until they are approved by the Commission.

(b) *CHX Holdings*. Provisions in the CHX Holdings Certificate of Incorporation and Bylaws address similar, but slightly different, issues and contain specific limitations on shareholder voting and ownership rights, including:

(i) *Restrictions on voting rights*. As described in proposed Article Fifth of the CHX Holdings Certificate of Incorporation, holders of the common stock or preferred stock of CHX Holdings, either alone or together with any of their affiliates or associates or any other person, directly or indirectly, may not (a) vote or give a proxy or consent with respect to shares representing more than 20% of the voting power of the then-issued and outstanding capital stock of CHX Holdings or (b) enter into any agreement, plan, or arrangement that would result in the shares of capital stock of CHX Holdings, subject to that agreement, plan, or arrangement, not being voted on a matter or any proxy being withheld, where the effect of that agreement, plan, or arrangement would be to enable any person or group to obtain more than 20% of the outstanding voting power.

(ii) *Restrictions on ownership rights*. In addition to the restrictions on voting discussed above, shares of common stock of CHX Holdings will be subject to the following restrictions: (a) no person, alone or together with its affiliates and associates or any person(s) acting in concert with it, may own of record or beneficially, directly or indirectly, more than 40% of the outstanding shares of any class of capital stock of CHX Holdings; and (b) no person, alone or together with its affiliates and associates or any person(s) acting in concert with it, who holds a trading permit of the CHX, may own of record or beneficially, directly or indirectly, more than 20% of any class of capital stock of CHX Holdings. These restrictions may be waived by the CHX Holdings Board in accordance with the terms of the Certificate of Incorporation of CHX Holdings and an appropriate amendment to the Bylaws of CHX Holdings, which must be approved by the Commission.[50]

(iii) *Management of CHX Holdings*. So long as CHX Holdings controls the Exchange, the CHX Holdings Board and its officers, employees and agents must give due regard to the preservation of the independence of the Exchange's self-regulatory function and to its obligations to investors and the public interest and must not take actions that would interfere with the self-regulatory activities of the Exchange.[51]

(iv) *Confidentiality*. The CHX Holdings books and records that relate to the Exchange's self-regulatory function must be kept confidential and must not be used for non-regulatory purposes.[52]

(v) *Cooperation with the Commission/consent to jurisdiction*. To the extent that they are related to the activities of the CHX, the books, records, officers, directors, and employees of CHX Holdings will be deemed to be the books, records, officers, directors, and employees of the Exchange for purposes of the Commission oversight.[53] Additionally, CHX Holdings officers, directors, employees, and agents are deemed to agree to cooperate with the Commission in its oversight activities relating to the Exchange and are deemed to submit to the jurisdiction of the Commission with respect to proceedings that might arise out of, or relate to, the activities of the Exchange.[54]

(3) *Trading Permits*.

Following the Exchange's demutualization, persons and firms who have been qualified for membership under Articles 1, 2, or 3 of the Exchange's current rules and, as a result, have access to the Exchange's trading floor and other facilities will separately receive trading permits entitling them to maintain the same trading access to the CHX that they currently enjoy. These persons will separately and automatically be issued one or more trading permits, unless they affirmatively ''opt out'' of the opportunity to obtain a trading permit.[55]

Each trading permit will constitute a revocable license that will allow the holder of the permit to access the CHX trading facilities in the same manner as previously authorized for the CHX's qualified trading members.[56] As summarized below, and with the exceptions noted below, although there will be some changes in terminology and certain administrative procedures following demutualization, the right of a qualified trading member to access the CHX, and execute transactions through the CHX, will not be substantially changed as a result of the demutualization transaction. Persons holding trading permits of the CHX will be ''members'' of the CHX for purposes of the Act and will be characterized as ''participants'' in the CHX subject to the CHX's regulatory jurisdiction, but they will not have any ownership interest in the Exchange or in CHX Holdings by virtue of their trading permits.[57]

Following demutualization, persons other than qualified trading members who seek issuance of a trading permit will be required to complete appropriate application materials and registration forms, satisfy regulatory requirements and pay processing charges and application fees. This process will be substantially similar to the current membership application process.[58] An individual participant may obtain only one trading permit. A participant that is not an individual (*i.e.*, a participant firm) may obtain multiple trading permits and may assign a nominee to each trading permit. A trading permit will be required for each person transacting business. As an example, a CHX specialist firm with 50 co-specialists will be required to obtain 50 trading permits and to register each co-specialist as a nominee. Importantly, however, no participant or participant firm will be allowed to hold more

benefit customers, by, for example, providing restitution, must be provided to those customers and will not be used by the Exchange for any purpose.

[49] *See* proposed Article Fourth of the CHX Certificate of Incorporation.

[50] CHX Holdings stockholders also are prohibited from selling, transferring, or otherwise disposing of their shares except in 1000-share increments, and no stockholder will be permitted to transfer shares in CHX Holdings until all amounts due and owing from that stockholder to the CHX have been paid. *See* proposed Article IX, Sections 2 and 3(b) of the CHX Holdings Bylaws.

[51] *See* proposed Article III, Section 1 of the CHX Holdings Bylaws.

[52] *See* proposed Article III, Section 2 of the CHX Holdings Bylaws.

[53] *See* proposed Article III, Section 3 of the CHX Holdings Bylaws.

[54] *See* proposed Article III, Sections 4 and 5 of the CHX Holdings Bylaws.

[55] The Exchange will circulate written materials to all qualified trading members, in advance of the Effective Date, notifying these persons that they can decide not to receive a trading permit and setting out the procedures by which that opt-out decision can be made. *See* Amendment No. 1, *supra* note 3.

[56] *See* proposed CHX Rules, Article II, Rule 2, ''Rights and Privileges of Participants.''

[57] *See* proposed CHX Rules, Article I, Rule 1(l) (definition of ''participant'').

[58] *See* proposed CHX Rules, Articles II and III. Other than the new rules relating to trading permits, the changes to the rules in these articles replace references to a ''member,'' ''member organization'' and ''member firm'' with the words ''participant'' and ''participant firm,'' delete references to sales of memberships, and consolidate the current separate articles that relate to member firms and member corporations into a single article regarding participant firms. These changes are not designed to alter the substantive rights and obligations of the CHX members.

trading permits than are necessary to the conduct of business on the Exchange. All trading permits must be held by an active participant or must be held by an active participant firm, where the participant firm has assigned an active participant as its nominee.[59]

Once issued, a trading permit of the CHX will be effective for one year following its issuance date and will automatically renew for an additional one-year term on each anniversary of the issuance date, unless the holder notifies the Exchange (by giving not less than 60 days' notice) that the holder wishes to waive its right to this automatic renewal. If the participant waives the right to renew the permit, it will expire at the end of the then-current term.[60] A trading permit may not be sold, leased or otherwise transferred.[61] As an exception to the non-transferability of trading permits, a trading permit may be transferred to the name of a nominee within the same participant firm with the approval of the CHX. In addition to the holder's right to relinquish a trading permit, the CHX may suspend or revoke a trading permit for the same reasons that currently entitle the CHX to suspend or revoke a membership and/or sell a seat.[62]

Currently, the Exchange's rules permit a person (referred to as an ''approved lessor'') to purchase a membership solely for the purpose of providing a financing mechanism for another person that seeks access to the Exchange.[63] Following demutualization, the Exchange's rules will be amended to delete Article IA of the CHX rules. Accordingly, following demutualization, no person may operate as an approved lessor or otherwise lease trading access to the Exchange.

There will be nominal processing charges and application fees relating to the issuance of trading permits. In addition, all participants and participant firms will be subject to an initial annual trading permit fee of $6,000 per year, payable monthly, for each trading permit.[64] These new fees are set out in the proposed amendments to the Schedule of Member Dues and Fees.[65]

(4) *Other Provisions in the Certificate of Incorporation and Bylaws*

(a) *Stockholder Ownership.* The proposed Bylaws for CHX Holdings and the CHX contain a variety of provisions relating to issues associated with stockholder ownership, including provisions relating to the timing and conduct of meetings, record dates, quorum requirements, proxies, and other matters.[66] These provisions are designed to reflect current corporate practices and are identical for CHX Holdings and the CHX.

(b) *Updated provisions of the CHX Charter and Bylaws.* The Exchange is proposing a few changes to its Bylaws and Certificate of Incorporation to modernize the Exchange's governing documents. Among other things, the Exchange is proposing: to include a streamlined description of its corporate purpose; to confirm that the CHX Board has the authority to set the CHX Board's compensation; to set out specific provisions relating to the authority of Exchange officers to enter into contracts, sign checks, and handle the funds of the Exchange; and to specifically provide that the Exchange will advance expenses, in appropriate circumstances, to directors, officers, and committee members of the CHX who are named as defendants in certain actions relating to Exchange business.[67] Identical provisions are proposed for the Certificate of Incorporation and Bylaws of CHX Holdings. The Exchange believes that these provisions are consistent with current corporate practices relating to these issues.

(5) *Summary of Rule Change Not Related to Demutualization.* In connection with its comprehensive review of its rules as part of this demutualization, the Exchange is proposing to delete the following rule provisions that relate to events that have already occurred or to programs that the Exchange no longer offers: Article IB, ''E-Session Trading Privileges''; Article XI, Rules 11, ''Mandatory Year 2000 Testing,'' and 12, ''Mandatory Decimal Pricing Testing;'' and Article XIII, Rule 4, ''Advertisements, Market Sales Literature Relating to Options and Communications to Customers.''

(6) *Administrative Issues*

(a) *Membership market.* CHX members will be able to buy and sell CHX memberships until the close of the seat market on the 11th business day prior to the expected Effective Date of the demutualization transaction.[68] All existing bids and offers in the seat market will be immediately cancelled at the close of the seat market on that day because the required posting procedures associated with any transactions consummated after that date could not be completed before the Effective Date of the transaction. This hiatus in the membership market will permit the Exchange to identify with certainty the persons and firms who hold membership interests and are entitled to receive shares on the Effective Date of the transaction.

(b) *Approval of demutualization transaction.* Under the Exchange's rules, an approved lessor who is not a qualified trading member of the Exchange is not entitled to vote his membership interest. If such a membership interest is leased to an Exchange member, the lessee may vote the membership interest, but, if the membership interest has not been leased, there is no vote associated with that membership interest.

The CHX's Board of Governors determined that it is appropriate to provide these approved lessors holding unleased membership interests with an opportunity to vote on the demutualization transaction. As a result, the CHX's Board of Governors conditioned the demutualization transaction on approval by the affirmative vote of both (1) a majority of the membership interests entitled to vote on the election of governors of the Exchange, and (2) a majority of all of the outstanding memberships of the Exchange. The first vote count was conducted in a manner consistent with prior votes of Exchange members and included votes cast with respect to memberships owned by (a) qualified trading members of the Exchange (whether or not those memberships are leased to other CHX members) and (b) approved lessors who were not qualified trading members of the Exchange where the memberships are leased to CHX members. The second vote count included all of the votes cast in the first count, as well as votes cast by approved lessors who were not qualified trading members of the Exchange where the memberships were not leased to CHX members. On November 11, 2004, the persons voting in these two vote counts approved the proposal to demutualize the CHX.[69]

[59] *See* proposed CHX Rules, Article II, Rule 2(e).

[60] *See* proposed CHX Rules, Article II, Rules 3(d), ''Term of Trading Permit,'' and 7, ''Termination of Trading Permit by Participant.''

[61] *See* proposed CHX Rules, Article II, Rule 6, ''Transfers of Trading Permits.''

[62] *See* generally, CHX Rules, Articles VII, ''Suspension—Reinstatement,'' and XII, ''Discipline and Trial Proceedings.''

[63] *See* CHX Rules, Article IA.

[64] This fee is identical to the fee currently charged by the Exchange for membership dues.

[65] *See* proposed Schedule of Membership Dues and Fees.

[66] *See* proposed Article IV of the CHX Holdings Bylaws and proposed Article III of the CHX Bylaws.

[67] *See* proposed CHX Certificate of Incorporation, Article Third (corporate purpose) and proposed CHX Bylaws Article II, Section 15 (board compensation), Article IX (contracts, loans, checks and deposits), and Article VI (indemnification and advancing of expenses).

[68] *See* Amendment No. 1, *supra* note 3.

[69] *See* Amendment No. 1, *supra* note 3.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[70] The CHX believes the proposal is consistent with Section 6(b)(5) of the Act [71] in that it would create a governance and regulatory structure of the Exchange that is designed to promote just and equitable principles of trade, to remove impediments, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange represents that it remains committed to its role as a national securities exchange and does not believe that the proposed change to a for-profit institution will undermine its responsibilities for regulating its marketplace. Indeed, as described above, the Exchange believes that it has proposed specific provisions in the Bylaws of both CHX Holdings and the demutualized CHX that reinforce the ability of the Exchange to perform its self-regulatory functions.

Moreover, according to the CHX, the Exchange is not proposing any significant changes to its existing operational and trading structure in connection with the demutualization. Instead, the CHX represents that the proposed rule change primarily consists of: organizational changes to the CHX Certificate of Incorporation and Bylaws reflecting the change in corporate form; governance changes that will reduce the size of the CHX Board and modify certain provisions governing the CHX committees; and membership rule changes that are necessary to implement the new CHX trading permit structure, which will replace the existing structure of owning and leasing Exchange memberships as a basis for trading rights. The proposed rule change also includes the CHX Holdings Certificate of Incorporation and Bylaws. Although the proposed governance structure does not reflect all of the proposals put forward by the Commission in its latest release on self-regulatory governance,[72] the Exchange believes that it is consistent with governance changes approved by the Commission for other demutualized exchanges and does not serve to erode the principles articulated in the Commission's recent governance release.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CHX 2004–26 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–CHX–2004–26. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CHX–2004–26 and should be submitted on or before January 18, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[73]

Margaret H. McFarland,

Deputy Secretary.

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[70] 15 U.S.C. 78f(b).

[71] 15 U.S.C. 78f(b)(5).

[72] *See* Securities Exchange Act Release No. 50699 (November 18, 2004), 69 FR 71126 (December 8, 2004) (File No. S7–39–04).

[73] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50887; File No. SR–DTC–2004–11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the Depository Trust Company's SMART/Track Service To Include Corporate Action Liability Notification

December 20, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 15, 2004, the Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change relates to a proposal by DTC to enhance its SMART/Track service (formerly called the Universal Hub service) by adding a new phase consisting of a Corporate Action Liability Notification Service that will provide industry participants an efficient means to facilitate the notification, acknowledgement, and maintenance of corporate action liability information.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In July 2004, the Commission approved DTC rule filing SR–DTC–2003–10 that allowed DTC to implement the SMART/Track service, which was then called the Universal Hub.[3] SR–DTC–2003–10 focused on the first phase of the service, a stock loan recall notification service. This filing relates to the Corporate Action Liability Notification Service, which is the second of the planned phases of SMART/Track.

When one party is owed securities by its counterparty, and those securities are the subject of a voluntary corporate action, it is industry practice for the owed party to send to the counterparty a liability notice that holds the counterparty liable for delivery of the securities in time for the owed party to participate in the voluntary corporate action (''Liability Notice''). It is also customary in the industry for the counterparty receiving the Liability Notice to reject the notice, deliver the securities that are the subject of the Liability Notice to the sender of the notice, or convert or exchange the securities to the corresponding corporate actions proceeds. Currently, industry participants use faxes and phone calls to communicate Liability Notices. Lack of a formal mechanism to send and receive Liability Notices has proved to be inefficient as the process is paper intensive and subject to transmission error and delays in response time.

To remedy these issues and to support the industry groups with which DTC has worked on this project,[4] DTC developed the Corporate Action Liability Notification Service to automate this labor-intensive process.

The goal of the Corporate Action Liability Notification Service is to provide a central point of access for industry participants to send and to receive Liability Notices, to respond to Liability Notices, and to review status information relating to Liability Notices. In addition, a link to DTC's Reorganization Inquiry for Participants System (''RIPS'') allows some fields to be populated automatically when the corporate action event is in RIPS. The sender of the message, however, remains responsible for the content of the message. By providing a central point of access to all parties, the Corporate Action Liability Notification Service provides interoperability between participants and permits participants to avoid the costs and inefficiencies of each participant building multiple automated bilateral links to its counterparties.

The Corporate Action Liability Notification Service is subject to DTC's general standard of liability for information services (*i.e.,* responsibility for gross negligence and willful misconduct). The service will be available only to DTC participants. If, in the future, DTC decides to make the Corporate Action Liability Notification Service available to non-participants, DTC will file another proposed rule change.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder applicable to DTC because the proposed will promote efficiencies relating to Liability Notices. The proposed rule change will be implemented consistently with the safeguarding of securities and funds in the custody or control of DTC because DTC will be acting as a notification service.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has discussed this rule change proposal with various DTC participants and industry groups, a number of whom have worked closely in developing the proposed Corporate Action Liability Notification Service. Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(4)[7] thereunder because the proposed rule effects a change in an existing service of DTC that does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which DTC is responsible and does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–DTC–2004–11 on the subject line.

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] Securities Exchange Act Release No. 34–50029 (July 15, 2004), 69 FR 43870 (July 22, 2004).

[4] These groups include the Corporate Actions Division of the Securities Industry Association (''SIA'') and the Corporate Actions Liability Working Group, a subcommittee of the SIA's STP Steering Committee.

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(4).

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–DTC–2004–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule 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 DTC and on DTC's Web site at *http://www.dtc.org.* 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–DTC–2004–11 and should be submitted on or before January 18, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

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[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50896; File Nos. SR–NYSE–2004–12; SR–NASD–2003–140]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Changes by the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. Relating to the Prohibition of Certain Abuses in the Allocation and Distribution of Shares in Initial Public Offerings (''IPOs'')

December 20, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on September 10, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') Amendment No. 1 to its proposed rule change (''NYSE Amendment No. 1''), which it originally filed on February 25, 2004.

On August 4, 2004, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Commission Amendment No. 2 to its proposed rule change (''NASD Amendment No. 2''), which it originally filed on September 15, 2003, and subsequently amended on December 9, 2003.

NYSE Amendment No. 1 and NASD Amendment No. 2 are described in Items I, II, and III below, which Items have been prepared by the respective self-regulatory organizations (''SROs''). The Commission is publishing this notice to solicit comments on the proposed rule changes as amended from interested persons.

I. Self-Regulatory Organizations' Statements of the Terms of Substance of the Proposed Rule Changes

The NYSE is filing with the Commission proposed new NYSE Rule 470 (IPO Allocations and Distributions), governing the allocation and distribution of initial public offerings (''IPOs'').

NASD is proposing new NASD Rule 2712 to further and more specifically prohibit certain abuses in the allocation and distribution of shares in IPOs.

Below is the text of the proposed rule changes. Proposed new language is underlined.

A. NYSE's Proposed Rule Text

Rule 470 IPO Allocations and Distributions

Prohibition on Abusive IPO Allocation Practices

(A) Quid Pro Quo Allocations

No member, member organization, or person associated with a member or member organization may offer or threaten to withhold shares it allocates in an initial public offering (''IPO'') as consideration or inducement for the receipt of compensation that is excessive in relation to the services provided by the member or member organization.

(B) Spinning

No member, member organization, or person associated with a member or member organization may allocate IPO shares to an executive officer or director of a company, including to a person materially supported by such executive officer or director:

(1) if the member or member organization has received compensation from the company for investment banking services in the past 12 months;

(2) if the member or member organization expects to receive or intends to seek investment banking business from the company in the next 6 months; or

(3) on the express or implied condition that such executive officer or director, on behalf of the company, direct future investment banking business to the member or member organization.

For purposes of Rule 470(B)(2), a member or member organization that allocates IPO shares to an executive officer or director of a company, or a person materially supported by such officer or director, from which it subsequently receives investment banking business within the next 6 months, will be presumed to have made the allocation with the expectation or intent to receive such business. A member or member organization, however, may rebut this presumption by demonstrating that the allocation of IPO shares was not made with the expectation or intent to receive investment banking business.

(C) Policies Concerning Flipping

(1) No member, member organization or person associated with a member or member organization may directly or indirectly recoup, or attempt to recoup, any portion of a commission or credit paid or awarded to an associated person for selling shares in an IPO that are subsequently flipped by a customer unless the managing underwriter has assessed a penalty bid, as defined in Rule 100 of Regulation M under the Securities Exchange Act of 1934 (the ''Exchange Act''), on the entire syndicate.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

(2) In addition to its obligation to maintain records relating to penalty bids under Rule 17a–2(c)(1) of the Exchange Act, a member or member organization shall promptly record and maintain information regarding any penalties or disincentives assessed on its associated persons in connection with a penalty bid.

IPO Pricing and Trading Practices

(D) IPO Pricing

No member or member organization may serve as a book-running lead manager of an IPO, unless the IPO meets all of the following conditions:

(1) The book-running lead manager will provide the issuer's pricing committee (or, if the issuer has no pricing committee, its board of directors) or a similar managing group authorized to oversee and address the pricing and allocation of such IPO shares:

(a) a regular report of indications of interest, including the names of interested institutional investors and the number of shares indicated by each, as reflected in the book-running lead manager's book of potential institutional orders, and a report of aggregate demand from retail investors;

(b) after the settlement date of the IPO, a report of the final allocation of shares to institutional investors as reflected in the books and records of the book-running lead manager, including the names of purchasers and the number of shares purchased by each, and aggregate sales to retail investors.

(2) Lock-Up Agreements. Any lock-up agreement or other restriction on the transfer of the issuer's shares by officers and directors of the issuer shall provide that:

(a) such agreements will apply to their issuer-directed shares;

(b) at least two business days before the release or waiver of any lock-up or other restriction on the transfer of the issuer's shares, the book-running lead manager will notify the issuer of the impending release or waiver and announce the impending release or waiver through a major news service.

(3) Agreement Among Underwriters. The agreement between the book-running lead manager and other syndicate members provides that with respect to any shares returned by a purchaser to a syndicate member after secondary market trading commences:

(a) the returned shares will be used to offset any existing syndicate short position; or

(b) if no syndicate short position exists, or if all existing syndicate short positions have been covered, the member or member organization must offer returned shares at the public offering price to customers' unfilled orders pursuant to a random allocation methodology.

(E) Market Orders

No member or member organization may accept a market order for the purchase of IPO shares during the first day that IPO shares commence trading on the secondary market.

(F) Definitions

For purposes of this Rule, the following terms shall have the meanings stated below.

(1) The terms ''person associated with a member or member organization'' and ''associated person of a member or member organization'' shall have the same meaning as defined under Section 3(a)(21) of the Exchange Act.

(2) The term ''initial public offering'' is defined in Rule 472.100.

(3) ''Material support'' means directly or indirectly providing more than 25% of a person's income in the prior calendar year. Persons living in the same household are deemed to be providing each other with material support.

(4) The term ''investment banking services'' is defined in Rule 472.20.

(5) ''Flipped'' means the initial sale of IPO shares purchased in an offering within 30 days following the offering date, as defined in Rule 472.120.

(6) ''Penalty bid,'' as defined in Rule 100 of Regulation M, ''means an arrangement that permits the managing underwriter to reclaim a selling concession from a syndicate member in connection with an offering when the securities originally sold by the syndicate member are purchased in syndicate covering transactions.''

B. NASD's Proposed Rule Text

2712. IPO Allocations and Distributions

(a) Quid Pro Quo Allocations

No member or person associated with a member may offer or threaten to withhold shares it allocates in an initial public offering (''IPO'') as consideration or inducement for the receipt of compensation that is excessive in relation to the services provided by the member.

(b) Spinning

No member or person associated with a member may allocate IPO shares to an executive officer or director of a company, or to a person materially supported by such executive officer or director:

(1) if the member has received compensation from the company for investment banking services in the past 12 months;

(2) if the member expects to receive or intends to seek investment banking business from the company in the next 6 months; or

(3) on the express or implied condition that such executive officer or director, on behalf of the company, direct future investment banking business to the member.

For purposes of paragraph (b)(2), a member that allocates IPO shares to an executive officer or director of a company, or a person materially supported by such officer or director, from which it receives investment banking business in the next 6 months will be presumed to have made the allocation with the expectation or intent to receive such business. A member, however, may rebut this presumption by demonstrating that the allocation of IPO shares was not made with the expectation or intent to receive investment banking business.

(c) Policies Concerning Flipping

(1) No member or person associated with a member may directly or indirectly recoup, or attempt to recoup, any portion of a commission or credit paid or awarded to an associated person for selling shares in an IPO that are subsequently flipped by a customer, unless the managing underwriter has assessed a penalty bid on the entire syndicate.

(2) In addition to any obligation to maintain records relating to penalty bids under SEC Rule 17a–2(c)(1), a member shall promptly record and maintain information regarding any penalties or disincentives assessed on its associated persons in connection with a penalty bid.

(d) Definitions

For purposes of this Rule, the following terms shall have the meanings stated below.

(1) ''Flipped'' means the initial sale of IPO shares purchased in an offering within 30 days following the offering date of such offering.

(2) ''Penalty bid'' means an arrangement that permits the managing underwriter to reclaim a selling concession from a syndicate member in connection with an offering when the securities originally sold by the syndicate member are purchased in syndicate covering transactions.

(3) ''Material support'' means directly or indirectly providing more than 25% of a person's income in the prior calendar year. Persons living in the same household are deemed to be providing each other with material support.

(e) IPO Pricing and Trading Practices

In an equity IPO:

(1) Reports of Indications of Interest and Final Allocations. The book-running lead manager must provide to

the issuer's pricing committee (or, if the issuer has no pricing committee, its board of directors):

(A) a regular report of indications of interest, including the names of interested institutional investors and the number of shares indicated by each, as reflected in the book-running lead manager's book of potential institutional orders, and a report of aggregate demand from retail investors;

(B) after the settlement date of the IPO, a report of the final allocation of shares to institutional investors as reflected in the books and records of the book-running lead manager including the names of purchasers and the number of shares purchased by each, and aggregate sales to retail investors;

(2) Lock-Up Agreements. Any lock-up agreement or other restriction on the transfer of the issuer's shares by officers and directors of the issuer shall provide that:

(A) Any lock-up agreement or other restriction on the transfer of the issuer's shares by officers and directors of the issuer shall provide that such restrictions will apply to their issuer-directed shares; and

(B) At least two business days before the release or waiver of any lock-up or other restriction on the transfer of the issuer's shares, the book-running lead manager will notify the issuer of the impending release or waiver and announce the impending release or waiver through a major news service;

(3) Agreement Among Underwriters. The agreement between the book-running lead manager and other syndicate members must require that any shares returned by a purchaser to a syndicate member after secondary market trading commences be used to (a) offset the existing syndicate short position or (b) if no syndicate short position exists, the member must offer returned shares at the public offering price to unfilled customers' orders pursuant to a random allocation methodology.

(4) Market Orders. No member may accept a market order for the purchase of IPO shares during the first day that IPO shares commence trading on the secondary market.

II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the NYSE and NASD included statements concerning the purpose of, and statutory basis for, the proposed rule changes.[3] The text of these statements may be examined at the places specified in Item IV below. The NYSE and NASD have prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. NYSE's Purpose

Proposed NYSE Rule 470 (IPO Allocations and Distributions) would govern the allocation and distribution of IPOs by members and member organizations. The Rule prohibits certain inappropriate conduct by members and member organizations in allocating and distributing IPOs and will provide the investing public with a greater degree of confidence in the IPO process and the capital markets as a whole.

Background

According to the NYSE, a series of regulatory investigations identified certain types of questionable conduct by securities underwriters and others involved in the IPO process. Examples of such conduct noted by the NYSE included, among others: (1) ''spinning,'' whereby underwriters allocated hot IPO shares to executives of prospective investment banking clients in return for future investment banking business; (2) unlawful ''quid pro quo'' arrangements, whereby underwriters allocated IPO shares as consideration or inducement for the receipt of compensation that is excessive in relation to the services provided by the member or member organization; (3) the inequitable imposition of penalty bids (reclaiming of selling concessions) upon retail brokers, but not brokers servicing institutional clients, whose clients immediately sold (flipped) IPO shares in the aftermarket; and (4) allocating IPO shares based on agreements to pay excessive commissions for unrelated securities transactions.

In August 2002, the NYSE and NASD, at the request of the SEC, established an IPO Advisory Committee (the ''Committee'') to address the practices noted above, review the IPO process as a whole, and make recommendations to address these issues and improve the process in general. The work of the IPO Advisory Committee resulted in the issuance of a report in May 2003.[4]

Recognizing the importance of IPOs to the vitality of our capital markets, the Committee solicited and/or received input from all constituencies involved in this process, including investment bankers, venture capitalists, individual and institutional investors, and listed companies. The Committee also received input from various trade organizations (*i.e.*, Association of Publicly Traded Companies), and from representatives from academia as well.

The Committee proposed 20 recommendations that address four major subject areas: (1) The IPO process must promote transparency in pricing and avoid aftermarket distortions; (2) Abusive allocation practices must be eliminated; (3) Regulators must improve the flow of, and access to, information regarding IPOs; and (4) Regulators must encourage underwriters to maintain the highest possible standards, establish issuer education programs regarding the IPO process, and promote investor education about the advantages and risks of IPO investing.[5]

In terms of rulemaking, the recommendations cover three areas: (1) Recommendations requiring SEC Rulemaking; (2) Recommendations requiring SRO rulemaking; and (3) Recommendations that may require changes to marketplace listing standards.

The Exchange is proposing NYSE Rule 470 to address the following recommendations in the IPO Report:

(a) *Recommendations 2 and 14/Proposed NYSE Rule 470(D)(1)*—Require the managing underwriter to disclose indications of interest and final allocations to an issuer's pricing committee or, if the issuer has no pricing committee, to its board of directors.

(b) *Recommendation 4/Proposed NYSE Rule 470(E)*—Prohibit the acceptance of market orders to purchase IPO shares in the aftermarket for one trading day following an IPO.

(c) *Recommendation 5/Proposed NYSE Rule 470(C)*—Prohibit the inequitable imposition of ''flipping'' penalties (penalty bids) on associated persons whose customers flip IPO shares.

(d) *Recommendation 6/Proposed NYSE Rule 470(D)(3)*—Establish

[3] The Commission notes that the Exchange intends for the text contained in Amendment No. 1 to be included in its statement of the purpose for the proposed rule change. Telephone conversation between William Jannace, attorney, NYSE, Douglas Preston, attorney, NYSE, Joan Collopy, special counsel, Division of Market Regulation, Commission, and Bradley Owens, attorney, Division of Market Regulation, Commission (December 10, 2004).

[4] *NYSE/NASD IPO Advisory Committee, Report and Recommendations,* (May 2003), which is available at *http://www.nyse.com/pdfs/iporeport.pdf* (''IPO Report'').

[5] *See* IPO Report, page 3.

procedures designed to prevent reneged IPO allocations from being used to benefit favored clients of the underwriter.

(e) *Recommendation 9/Proposed NYSE Rule 470(B)*—Prohibit the allocation of IPO shares (1) to executive officers and directors (and their household members) of companies that have an investment banking relationship with the underwriter, or (2) as a ''quid pro quo'' for investment banking business.

(f) *Recommendation 11/Proposed NYSE Rule 470(A)*—Prohibit the allocation of IPO shares as consideration or inducement for the payment of excessive compensation for other services provided by the underwriter.

(g) *Recommendation 17/Proposed NYSE Rule 470(D)(2)(a)*—Require that lock-up agreements apply to shares owned by the issuer's officers and directors as well as to ''issuer-directed'' shares.

(h) *Recommendation 17/Proposed NYSE Rule 470(D)(2)(b)*—Impose new notification requirements when underwriters waive lock-ups.

According to the NYSE, some of the Committee's other recommendations will not require rulemaking. In this regard, the Committee recommended additional requirements for enhanced periodic internal review by underwriters of their IPO supervisory procedures and a heightened focus on the IPO process by the SROs. The Exchange will address these recommendations through its regulatory examinations of members and member organizations.

Although the Exchange is proposing new NYSE Rule 470 regarding IPO allocations and distributions, the federal securities laws and the Exchange rules already prohibit certain IPO allocation and distribution abuses. According to the Exchange, NYSE Rule 470 is proposed to address certain of the issues raised in the IPO Report and is intended to complement existing federal securities laws and Exchange Rules, which will continue to apply after the proposed rule change is effective.

Discussion of Proposed Rule Provisions

According to the NYSE, the IPO Report noted that certain allocation practices raise an appearance of impropriety, and that rules should be adopted to address this issue. Accordingly, the Exchange is proposing a rule to make unlawful the practice of ''spinning'' and other ''quid pro quos'' by members and member organizations as inducement for the receipt of investment banking business.

Proposed NYSE Rule 470(A)—Quid Pro Quo Allocations

According to the NYSE, proposed NYSE Rule 470(A) would prohibit members and member organizations from allocating IPO shares as consideration or inducement for the receipt of compensation that is excessive in relation to the services provided by the member or member organizations. The NYSE believes that while the federal securities laws and Exchange rules generally prohibit abusive IPO allocation and distribution arrangements, such as where underwriters allocate IPO shares based on a potential investor's agreement to pay excessive commissions on trades of unrelated securities or based on the recipient's agreement to ''kick back'' to the underwriter, either through excess commissions or otherwise, a portion of flipping profits, the proposed rule would specifically prohibit such conduct. According to the NYSE, the proposed prohibition, however, is not intended to interfere with a member's or member organization's business relationships with its customers nor would it prohibit legitimate allocations of such IPO shares to customers of the member or member organization, even when a customer has retained the member or member organization for services.

Proposed NYSE Rule 470(B)—Spinning

According to the NYSE, as originally proposed, NYSE Rule 470(B) would prohibit the awarding of IPO shares to executive officers and directors and their household members of issuers that have, or will have, an investment banking relationship with the member or member organization on the condition that such officers and directors, on behalf of the issuer, direct future investment banking business to the member or member organization (commonly referred to as ''spinning'').

In Amendment No. 1, the Exchange substituted the term ''company'' for ''issuer,'' as many of the practices addressed in the proposed rule may occur prior to a company becoming an issuer. Further, the prohibitions against such allocations would also extend to affiliates of the company.

In Amendment No. 1, the Exchange amended its original prohibition precluding allocations to executive officers or directors of a company to include persons ''materially supported'' by such officers or directors if the member or member organization expects to receive or intends to seek investment banking business from the company in the next six months. Previously, the proposed rule change applied to household members of such persons and only looked forward three months.

In addition, Amendment No. 1 adds the presumption that if a firm allocates IPO shares to an executive officer or director of a company and it subsequently receives investment banking business from that company, then the IPO allocations were made with the expectation or intent to receive such business. The proposed rule states that a member or member organization may rebut this presumption. According to the Exchange, such evidence could include procedures that ensure investment banking personnel involved in allocations do not have any information about the beneficial owners of retail accounts that received allocations.

In Amendment No. 1, the Exchange is proposing to define ''material support'' to mean ''* * * directly or indirectly, providing more than 25% of a person's income in the prior calendar year. Persons living in the same household are deemed to be providing each other with material support.''

Proposed NYSE Rule 470(C)—Policies Concerning Flipping

According to the NYSE, proposed NYSE Rule 470(C) would prohibit the inequitable imposition of a flipping penalty (penalty bids) on associated persons whose customers flipped IPO shares unless such penalty is imposed on the entire underwriting syndicate. In Amendment No. 1, the Exchange deleted the term ''underwriting'' from the term ''underwriting syndicate'' to ensure that penalty bids for flipping be assessed on the entire syndicate, not just the underwriting syndicate (*e.g.*, the selling group).

Rule 104 of Regulation M under the Exchange Act,[6] permits underwriters to impose penalty bids (as defined in Rule 100 of Regulation M)[7] on syndicate members. ''Penalty bid,'' as defined in Rule 100 of Regulation M, means ''an arrangement that permits the managing underwriter to reclaim a selling concession from a syndicate member in connection with an offering when the securities sold by the syndicate member are purchased in syndicate transactions.'' The purpose of imposing penalty bids is to promote a stable aftermarket, whereby purchasers of the offering remain long-term shareholders of the securities and not merely speculators seeking to lock-in instant profits, as was prevalent during the

[6] 17 CFR 242.104.

[7] 17 CFR 242.100.

recent stock market bubble of the late 1990s.

According to the NYSE, regulatory investigation revealed instances where, while penalty bids where not imposed upon syndicate members, such members themselves selectively imposed such penalties upon certain of their brokers whose customers (generally retail) flipped IPO shares in the immediate aftermarket. Similar penalties were not imposed upon brokers whose institutional type investors engaged in the same trading patterns. Selective imposition of penalty bids upon retail brokers resulted in these brokers discouraging their retail customers from selling immediately in the aftermarket, while implicitly permitting institutional-type investors to sell during this same time period.

According to the NYSE, proposed NYSE Rule 470(C)(1) addresses this inequity by prohibiting the imposition of penalty bids upon an associated person of a member or member organization, unless the penalty has been imposed on the entire syndicate. As proposed, NYSE Rule 470(C)(1) would not affect the applicability of Rule 104 of Regulation M as it pertains to penalty bids.

In addition, as proposed, members and member organizations would be required to maintain records of penalty bids in accordance with Rule 17a–2(C)(1)[8] under the Exchange Act. Rule 17a-2(C)(1) imposes recordkeeping requirements on managers or syndicates in connection with syndicate covering transactions and the imposition of penalty bids. In Amendment No. 1, the Exchange is proposing that all members and member organizations, not solely managers as 17(a)–2(c)(1) prescribes, be subject to recordkeeping requirements for any penalties or disincentives assessed on their associated persons in connection with a penalty bid.

Proposed NYSE Rule 470(D)—IPO Pricing and Trading Practices Disclosure of Indications of Interest and Final Allocations

As originally proposed, NYSE Rule 470(D)(1) requires book-running lead managers to disclose in a regular report indications of interest and final allocations of an IPO to an issuer's pricing committee or, if the issuer has no pricing committee, to its board of directors or a managing group authorized to oversee this process. In Amendment No. 1, the Exchange amended the proposed rule to substitute ''book-running lead manager'' for ''managing underwriter,'' to reflect market practice whereby the book-running lead manager maintains this information.

The Exchange believes that disclosure of each retail customer's indications of interest (and subsequent allocations) would be of limited benefit to issuers and their pricing committees. According to the NYSE, the underlying purpose of this proposal is to ensure that the issuer or its pricing committee has a clear picture of the demand for its securities. Thus, the NYSE believes that information about each retail investor would generally not be helpful. Accordingly, the Exchange is amending its proposed rule to require that the book-running lead manager provide a ''regular report'' of indications of interest for its institutional book, including names of interested institutional investors and the number of shares indicated by each, and to reflect retail demand in aggregate terms only.

The Exchange believes that a regular report of institutional investors' indications of interest should be made as often as appropriate, including when a material change occurs, or in connection with certain meetings with the issuer or its pricing committee, and as frequently as requested by the issuer or its pricing committee. The Exchange is aware that book-running lead managers, and to a certain extent syndicate managers, have regular meetings to discuss the book-building process, including indications of interest from institutional investors. Also, the book-running lead manager usually has frequent and daily discussions with issuers about the level of indications of interest. The proposed rule change would conform to these practices.

According to the NYSE, the pricing of an IPO is determined, in part, by investor demand. Investor demand is measured by preliminary indications of interest underwriters receive up to the time an offering is declared effective by the Commission. In requiring disclosure of such information, the Exchange will promote greater transparency in IPO pricing, a stated goal of the IPO Report.

In Amendment No. 1, the Exchange amended proposed Rule 470 (D)(1)(b) to require the book-running lead manager to provide the report on final allocations within a reasonable time after ''settlement date'' rather than after ''closing date.'' The settlement date and closing date may, at times, be the same date; but the term ''settlement date'' is more precisely understood as the date on which the issuer transfers its shares in return for offering proceeds from the syndicate.

Limitations on ''Friends and Family'' Programs

The IPO Report recommends promoting greater transparency with regard to ''issuer-directed'' allocations such as ''friends and family'' programs. ''Friends and family'' programs are ''issuer-directed allocations of a portion of an offering used to permit company employees to invest in their employer at the IPO price, or to permit strategic business partners to have a small investment in the issuer.''[9] According to the NYSE, lock-ups are essential, in the early stages of the life of a company going public, for maintaining a stable aftermarket following an IPO. Subjecting a greater number of shares to such agreements will help foster this stable aftermarket by preventing shares, not ordinarily subject to lock-ups, from being sold in the immediate aftermarket.

Requirements Concerning Lock-up Exemptions

As proposed, NYSE Rule 470(D)(2)(a) would require that lock-up agreements also apply to officers' and directors' ''issuer-directed'' shares, in addition to their other shares that are subject to such agreements. Proposed NYSE Rule 470(D)(2)(b) would require prior notification when lock-ups expire or are waived. Further, proposed NYSE Rule 470(D)(2)(b) would require 2-day prior notification to the issuer by a book-running lead manager through a major news service.[10] The NYSE believes this notification requirement will benefit an issuer's shareholders and the marketplace in that it will ensure that they are aware of this prior information to and not after the sale by directors and officers of the issuer.

In Amendment No. 1, the Exchange amended proposed NYSE Rule 470 (D)(2) to clarify that the required public announcement by the book-running lead manager must be made at least two days before the release or waiver of any lock-up requirement through a major news service. According to the NYSE, the IPO Advisory Committee concluded that investors reasonably expect that the issuer's directors, officers and large pre-IPO shareholders who agree to ''lock-up'' their shares will be bound by those agreements for the stated period. As a result, the proposed rule provides that the book-running lead manager should announce any release or waiver of a lock-up agreement at least two business

[8] 17 CFR 240.17a–2(c)(1).

[9] *See* IPO Report, page 13.

[10] Recommendation 17 of the IPO Report also requires that issuers file a Form 8–K, prior to the time on insider makes sales pursuant to the expiration or waiver of the lock-up. According to the NYSE, this would require SEC rulemaking.

days before through a major news service. The Exchange believes it is important to make clear that this notification requirement applies to a release or waiver of lock-ups by the issuer and any selling shareholder.

The Exchange does not believe that placing such notice on the managing underwriter(s) Web site will provide for sufficient public dissemination of such information. Often, a member or member organization Websites contain large amounts of information and may provide challenges to locating specific information. As such, the Exchange believes that notice of the release or waiver of any lock-up or other restriction should be disseminated through a broad non-exclusionary distribution medium to the public, such as through major news services. Accordingly, the Exchange amended its Filing to limit dissemination to this prescribed manner and not permit dissemination through a Web site, as originally proposed in their Filing.

According to the NYSE, such a notice must be released by the fastest available means. The fastest available means may vary in individual cases and according to the time of day. To ensure adequate coverage, releases should be marked ''For Immediate Release'' and should be given to, for example, Dow Jones & Company, Inc., Reuters Economic Services and Bloomberg Business News. The book-running lead manager is also encouraged to promptly distribute such notices to, for example, the Associated Press and United Press International, as well as to newspapers in New York City and in cities where the issuer is headquartered or has other major facilities. According to the NYSE, every notice should include the name and telephone number of an official at the book-running lead manager who will be available if a newspaper or news wire service desires to confirm or clarify the notice.[11]

The NYSE believes proposed NYSE Rule 470 (D)(2)(b) will help facilitate members' and member organizations' compliance with recently enacted amendments to NYSE Rule 472,[12] which prohibits managers and co-managers of a securities offering from publishing research or offering opinions during a public appearance on an issuers' securities within 15 days prior to or after the expiration or waiver of a lock-up agreement. According to the NYSE, requiring prior public notification should prevent the inadvertent issuance of reports, and/or the making of public appearances through ignorance of the expiration, or waiver of such agreements.

Returned Shares

The IPO Report recommended the establishment of clear parameters for underwriters' sales of returned shares after secondary market trading has commenced. It noted that IPO shares are sometimes returned to the underwriter after secondary trading commences as a result of either: (1) mistaken allocations; or (2) incomplete information or other problems relating to the delivery of shares and settlement of trades. In instances where the IPO shares trade at an immediate aftermarket premium, the underwriter has the ability to allocate any returned shares to favored customers at the IPO price, guaranteeing such customers an immediate locked-in profit.[13]

In response to this practice, proposed NYSE Rule 470(D)(3) would require all syndicate members to prioritize the treatment of returned shares in the following order: (1) use the returned shares to offset any existing syndicate short position; or (2) if no syndicate short position exists, or if all existing syndicate short positions have been covered, offer those shares to customers' unfilled orders at the public offering price pursuant to a random allocation methodology.

While the proposed rule change does not specify a particular methodology, the Exchange expects that members and member organizations will develop systems to randomly allocate in an objective non-discriminatory manner. According to the Exchange, member and member organizations may use the allocation of option exercise notices as an example when designing such a system. According to the Exchange, in requiring the use of a random allocation methodology, members and member organizations will be limited in their ability to benefit certain preferred customers by selecting a particular customer or group of customers to receive a guaranteed profit.

Limitation on Market Orders for One Day Following an IPO

Proposed NYSE Rule 470(E) would prohibit the acceptance of market orders to purchase IPO shares in the aftermarket for one trading day following an IPO. The IPO Report noted that IPOs are ''inherently more volatile than stocks with a public trading history,'' and that the placement of market orders by individuals in the immediate aftermarket may not ''reflect their true investment decisions nor their reasonable expectations.''[14] Therefore, the Committee reasoned that prohibiting the acceptance of market orders immediately following an IPO would allow the market to develop more trading information and thus make the placement of such orders more appropriate for investors. In addition, institutional investors generally rely on limit orders for IPOs in the aftermarket. In this regard, the Exchange does not believe that the prohibitions on the placement of market orders for IPOs on the first trading day will have an appreciable effect on liquidity and market efficiency.

The NASD has filed proposed amendments with the SEC to address some of the recommendations noted above and has sought membership comment on additional proposed amendments. The staffs of both the Exchange and NASD are coordinating their efforts in an attempt to promulgate consistent rules.

The Exchange believes that enactment of the proposed Rule will complement and enhance recent Exchange initiatives including the Research Analysts' Conflicts Rules,[15] the Research Analysts Global Settlement,[16] and new Corporate Governance Listing Standards.[17]

2. NYSE's Statutory Basis

The Exchange believes that the basis for the proposed rule change is the requirement under Section 6(b)(5)[18] of the Exchange Act that the rules of the Exchange 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.

3. NASD's Purpose

NASD is proposing new NASD Rule 2712, which will better ensure that members avoid unacceptable conduct when they engage in the allocation and distribution of IPOs. The proposed rule change also is intended to sustain public confidence in the IPO process, which is critical to the continued success of the capital markets.

In August 2002, the SEC requested that NASD and the NYSE convene a high-level group of business and academic leaders to review the IPO

[11] *See also,* NYSE Listed Company Manual, Section 202.06 (Procedure for Public Release of Information).

[12] *See* NYSE Rule 472(f)(4).

[13] *See* IPO Report, pages 6 and 7.

[14] *See* IPO Report, page 6.

[15] *See* Securities Exchange Act Release No. 48252 (July 29, 2003), 68 FR 45875 (August 4, 2003), (SR–NYSE 2002–49).

[16] *See* Litigation Release No. 18438 (October 31, 2003).

[17] *See* Securities Exchange Act Release No. 48745 (November 4, 2003) (SR–NYSE–2002–33).

[18] 15 U.S.C. 78f(b)(5).

process, to recommend ways to address the problems evidenced during the hot market of the late 1990s and 2000, and to improve the underwriting process. In May 2003, the NYSE and NASD IPO Advisory Committee (''Committee'') issued its final report, which contains 20 recommendations.[19] In November 2003, NASD published *Notice to Members* 03–72 requesting comment on the Committee's recommendations applicable to NASD. The proposals in *Notice to Members* 03–72 supplemented proposals initially presented for comment in *Notice to Members* 02–55, which were filed with the SEC on September 15, 2003 and amended on December 9, 2003. NASD received 39 comment letters [20] in response to Notice to Members 03–72, which are discussed below.

Although NASD is proposing new rules addressing IPO allocations, the federal securities laws and existing NASD rules already prohibit IPO allocation abuses. In recent years NASD has brought several disciplinary actions with respect to violations of these provisions. These laws and rules would continue to apply, and will continue to be the subject of possible NASD enforcement, after the proposed rule change becomes effective. Moreover, each provision in proposed NASD Rule 2712 would apply independently. Compliance with one provision would not provide a safe harbor with respect to the other provisions of the Rule or with respect to other federal securities law and existing NASD rules.

A. Prohibition of Abusive Allocation Arrangements

NASD Rule 2712(a) would expressly prohibit a member and its associated persons from offering or threatening to withhold an IPO allocation as consideration or inducement for the receipt of compensation that is excessive in relation to the services provided by the member. This provision would prohibit this activity not only with respect to trading services, but to any service offered by the member. In addition, trading activity that serves no economic purpose other than to generate compensation for the member (*e.g.*, wash sales) would be viewed as ''excessive'' in relation to the services provided by the member, which are meaningless.

NASD does not intend that this prohibition interfere with legitimate customer relationships. For example, this provision is not intended to prohibit a member from allocating IPO shares to a customer because the customer has separately retained the member for other services, when the customer has not paid excessive compensation in relation to those services.

B. Prohibition of Spinning

According to the NASD, ''spinning,'' or awarding IPO shares to the executive officers and directors of an investment banking client, divides the loyalty of the agents of the company (*i.e.*, the executive officers and directors) from the principal (*i.e.*, the company) on whose behalf they must act. The NASD believes this practice is inconsistent with just and equitable principles of trade.

As proposed in *Notice to Members* 02–55, NASD Rule 2712(b) would have expressly prohibited a member and its associated persons from allocating IPO shares to an executive officer or director of a company on the condition that the executive officer or director, on behalf of the company, direct future investment banking business to the member. The rule also would have expressly prohibited IPO allocations to an executive officer or director as consideration for directing investment banking services previously rendered by the member to the company.

The NYSE/NASD IPO Advisory Committee supported the spinning proposal in *Notice to Members* 02–55 with several modifications. First, the Advisory Committee recommended that NASD prohibit an allocation of IPO shares to immediate family members of an executive officer or director whenever an allocation to the officer or director would be prohibited. The NASD amended the rule to eliminate the definition of immediate family and instead apply the prohibition on spinning just to persons ''materially supported'' by an executive officer or director of a company. This concept of material support is the same as used in NASD Rule 2790 (Restrictions on the Purchase and Sale of Initial Equity Public Offerings).[21] This change narrows the scope of the spinning prohibition to include only those members of the immediate family that live in the same household as the executive officer or director and is similar in scope to the provisions in NASD Rule 2711 (Research Analysts and Research Reports). The definition, however, captures persons outside of an executive officer's or director's immediate family if such executive officer or director, directly or indirectly, provides more than 25% of the person's income in prior calendar year.

Second, the Advisory Committee recommended that NASD bar IPO allocations to all executive officers and directors of a company with whom a member has an investment banking relationship. The Advisory Committee believed that the very existence of an investment banking relationship created, at the very least, an appearance of impropriety. NASD has amended the proposed rule change to incorporate this suggestion.

Consequently, proposed NASD Rule 2712(b) would prohibit the allocation of IPO shares to an executive officer or director of a company, or to persons materially supported by such an executive officer or director, if the member had received compensation from the company for investment banking services in the past 12 months. In addition, NASD has expanded the prohibition in proposed NASD Rule 2712 (b)(2) to preclude allocations to executive officers or directors of a company if the member expects to receive or intends to seek investment banking business from the company in

[19] *See* IPO Report, *supra* note 4.

[20] Letter from Alan R. Gordon dated November 25, 2003; Letter from Alan Tobey dated November 28, 2003; Letter from Allen Skaggs dated November 30, 2003; Letter from Peter W. LaVigne, American Bar Association, dated February 4, 2004; Letter from Banner Capital Markets LLC dated January 9, 2004; Letter from Bruce E. Holmes, PE, dated November 29, 2003; Letter from Harold Jones, Coughlin & Company Inc., dated January 9, 2004; Letter from Daniel M. Chernoff dated November 28, 2003; Letter from Don Brewer dated November 28, 2003; Letter from Edward J. Fedeli dated November 28, 2003; Letter from Edward M. Alterman, Fried, Frank, Harris, Shriver & Jacobson LLP, dated January 23, 2004; Letter from HGM dated November 28, 2003; Letter from J D Harris dated November 28, 2003; Letter from *Jandonbar@aol.com* dated November 30, 2003; Letter from Jeffrey E. Teich, Ph.D, dated November 25, 2003; Letter from *Lertel7635@aol.com* dated November 29, 2003; Letter from Malcolm R. Powell, M.D, dated November 28, 2003; Letter from Mandar Mirashi dated November 29, 2003; Letter from Mark H. Rapier dated November 30, 2003; Letter from Lawrence M. Ausubel, Market Design Inc., dated January 23, 2004; Letter from *Mohme@aol.com* dated November 29, 2003; Letter from Lester Morse, Esq., Morse & Morse, PLLC dated January 15, 2004; Letter from Jed Bandes, Mutual Trust Co. of America Securities, dated November 28, 2003; Letter from Ralph A. Lambiase, NASAA, dated January 26, 2004; Letter from Mark G. Heesen, NVCA, dated January 16, 2004; Letter from Henry P. Williams, Oppenheimer & Co., Inc., dated January 9, 2004; Letter from Patricia Evans dated November 29, 2003; Letter from Paul N. Mullen dated November 28, 2003; Letter from Peggy Hutchinson dated November 29, 2003; Letter from Peter Locke dated November 28, 2003; Letter from *RAMSkMgt@yahoo.com* dated November 28, 2003; Letter from Richard O. Gregory dated November 29, 2003; Letter from Rick Street dated November 29, 2003; Letter from Scott Cook dated January 23, 2004; Letter from John Faulkner, Securities Industry Association, dated January 23, 2004; Letter from Steve Antenozzi dated November 27, 2003; Letter from Thomas Weitzner dated November 30, 2003; Letter from Dr. Ann E. Sherman, University of Notre Dame, January 23, 2004; and Letter from William R. Hambrecht, WR Hambrecht & Co., dated January 9, 2004.

[21] *See* 68 FR 62126 (October 21, 2003).

the next 6 months. Previously, the proposed rule change only looked forward 3 months. The language of these provisions is based on similar language in NASD Rule 2711, concerning disclosure of investment banking compensation in research reports.[22]

In addition, the proposed rule change adds a presumption in paragraph (b)(2), stating that if a firm allocates IPO shares to an executive officer or director of a company and it subsequently receives investment banking business from that company, that the IPO allocations were made with the expectation or intent to receive such business. A member may rebut this presumption. According to the NASD, evidence to rebut this presumption could include procedures and information barriers that ensure that investment banking personnel involved in allocations do not have any information about the beneficial owners of retail accounts that received allocations.

Under the proposed rule change, the accounts of executive officers and directors and their immediate family would, in effect, be restricted accounts similar to the accounts subject to the Free-Riding and Withholding Interpretation (IM–2110–1). Accordingly, NASD requests comment on whether the prohibition should be codified in NASD Rule 2790, which was recently approved by the SEC[23] and is slated to replace the Free-Riding and Withholding Interpretation.

In *Notice to Members* 02–55, NASD proposed to amend NASD Rule 2710, the Corporate Financing Rule, to require that members file information regarding the allocation of IPO shares to executive officers and directors of a company that hires a member to be the book-running managing underwriter of the company's IPO. This requirement was designed to assist the NASD in monitoring the possibility that allocations were made in return for investment banking business. Under the amended proposal, all allocations to executive officers or directors of investment banking clients or potential clients would be prohibited. According to the NASD, the proposed reporting requirement under NASD Rule 2710 appears to be unnecessary and has been deleted from the proposal.

C. Restrictions on Penalty Bids

NASD Rule 2712(c) would prohibit members from penalizing associated persons whose customers have ''flipped'' IPO shares that they have purchased through the member, unless a penalty bid, as defined in Rule 100 of SEC Regulation M has been imposed. Rule 100 defines a penalty bid as ''an arrangement that permits the managing underwriter to reclaim a selling concession from a syndicate member in connection with an offering when the securities originally sold by the syndicate member are purchased in syndicate covering transactions.''

Rule 104 of Regulation M and Nasdaq Stock Market Rule 4624 provide notice and record keeping requirements for penalty bids. Penalty bids may be assessed in the aftermarket of an offering that is under downward price pressure from an imbalance of sell orders relative to purchase orders. NASD does not oppose this use of penalty bids. However, according to the NASD, some members have penalized their registered representatives in connection with flipping by retail customers, even when the managing underwriter has not assessed a penalty bid on the syndicate members. For example, members have penalized their registered representatives by recouping the commission or credits previously granted for the sale of IPO shares.

According to the NASD, the practical consequence of this practice is that registered representatives are penalized, and their retail customers may be pressured to retain their long position in the IPO shares, while representatives for institutional customers generally are not penalized at all for flipping activity by their customers. According to the NASD, the inequity of this selective penalization is most difficult to justify in light of the fact that most IPO shares are typically allocated to institutional customers. The NASD believes that the proposed rule would effectively prohibit this selective practice by permitting members to assess internal penalties on their registered representatives only when the managing underwriter has imposed a penalty bid on the syndicate members. The provision would not place any limit on syndicate penalty bids, however. This proposal was supported by the IPO Advisory Committee.

D. IPO Pricing and Trading Practices

a. Disclosure of Indications of Interest and Final Allocations

The IPO Advisory Committee recommended that issuers establish a pricing committee to evaluate the proposed offering price, and that underwriters be required to disclose to the issuer's pricing committee all indications of interest received before the issuer finalizes the IPO price. The Committee also recommended that underwriters be required to disclose to the issuer the final allocations after the offering is priced. The Committee concluded that greater participation by issuers in pricing and allocation decisions would better ensure that those decisions are consistent with the fiduciary duty of directors and management, and would provide management with more information to evaluate the underwriter's performance. A requirement that issuers establish a pricing committee would necessitate a listing standard by The Nasdaq Stock Market and the NYSE.

In *Notice to Members* 03–72, NASD solicited comment on a proposed rule change that would require that the underwriting agreement between the book-running lead manager and the issuer require that the book-running lead manager provide the issuer's pricing committee (or its board of directors if the issuer does not have a pricing committee) with: (1) a regular report of indications of interest, including the names of interested investors and the number of shares indicated by each, and (2) after the closing date of the IPO, a report of the final allocation of shares available to the manager, including the names of purchasers and the number of shares purchased by each.

According to the NASD, commenters generally supported these requirements but suggested the following changes.

1. Institutional vs. Retail Disclosure

Some commenters suggested that the report of indications of interest and final allocations should relate only to the ''institutional pot.'' Several commenters suggested that it is not practical for the book-running lead manager to provide the names of all individual investors who have expressed an indication of interest because the book-running lead manager does not collect the names of individual retail investors. Commenters also stated that brokerage firms consider the names of their individual investor clients to be proprietary information and confidentiality concerns may limit the ability of brokerage firms to disclose the names of individual investors to the book-running lead manager. Commenters also stated that retail indications of interest are usually submitted to a firm's syndicate desk as branch aggregates, not on an individual-by-individual basis. Finally, commenters suggested that information regarding the names of individual investors is likely to be of limited use to an issuer because, in an IPO, there could be thousands of individual investors.

NASD agrees that disclosure of each retail customer's indications of interest

[22] NASD rule 2711(h)(2)(A).

[23] *See* 68 FR 62126 (October 21, 2003).

(and subsequent allocations) would be of limited benefit to issuers and their pricing committees. The underlying purpose of this proposal is to ensure that the issuer or its pricing committees has a clear picture of the demand for its securities. Thus, the NASD believes that information about each individual retail investor would generally not be helpful. Accordingly, the NASD has revised the proposed rule change to require that the book-running lead manager disclose its institutional book of interest and to reflect retail demand in aggregate terms only.

2. Timing of Disclosure

One commenter suggested that rather than a ''regular report'' of indications of interest, the rule should require that the book-running lead manager provide information in a timely manner prior to pricing, or as frequently as requested by the issuer's pricing committee. Another commenter suggested that the book-running lead manager should be required to provide a single report of the major institutional indications of interest shortly before or at the time of pricing the offering.

The proposed rule would require a regular report of indications of interest, which report should be made as often as appropriate, including such as when a material change occurs, or in connection with certain meetings with the issuer or its pricing committee, and always as frequently as requested by an issuer or its pricing committee. Indeed, the NASD's understanding of the bookbuilding process is that most underwriters have frequent and even daily discussions with issuers about the level of indications of interest. The proposed rule change thus would codify this practice.

In response to one commenter, however, NASD has amended the proposed rule change to require the book-running lead manager to provide the report on final allocations within a reasonable time after ''settlement date'' rather than after ''closing date.'' The settlement date and closing date can be the same date, but the term ''settlement date'' may be more precisely understood as the date on which the issuer transfers its shares in return for offering proceeds from the syndicate.

3. Additional Disclosure

One commenter suggested that issuers would benefit from receiving information regarding relationships that underwriters have with purchasers. This commenter suggested that issuers would benefit from receiving additional information regarding the intended holding periods of purchasers, since issuers generally favor allocations to long-term holders over ''flippers.''

According to the NASD, this information generally may be useful or relevant to issuers. As the specificity of information about past account activity increases, however, financial privacy concerns also increase. Brokerage customers may reasonably expect that their broker will keep particular information about trades they have made in their accounts confidential. In addition, SEC Regulation M prohibits underwriters during the bookbuilding process from attempting to induce purchases in the aftermarket. This limits some of the information the underwriters are permitted to obtain and provide to the issuer regarding whether any particular account will be buying or selling the securities in the aftermarket. Accordingly, NASD has not included this requirement as part of the proposed rule change.

One commenter suggested that disclosure of different levels of interest at different prices should be required and that NASD should require a graphical display of this information. NASD believes that members should be able to design their forms of communication on indications of interest and final allocations as appropriate to particular offerings and issuers. Members, of course, may compete for investment banking business by offering certain disclosures and forms of disclosure, and likewise, issuers may condition an engagement with an investment bank on certain disclosures and forms of disclosure.

4. Underwriting Agreements

Several commenters stated that the obligation to provide indications of interest to the issuer should not be included in the underwriting agreement because the underwriting agreement is not signed until after pricing of the offering. These commenters suggested that NASD impose the obligation on the book-running lead manager directly. NASD agrees and has amended the proposed rule change accordingly.

b. Limitation on Market Orders for One Day Following an IPO

The IPO Advisory Committee recommended a prohibition on market orders for one trading day following an IPO. The Committee concluded that in light of the volatility of IPO issues, investors who place market orders immediately following an IPO may inadvertently purchase at prices that neither reflect their true investment decisions nor their reasonable expectations. Commenters, such as the SIA, generally opposed this proposal. Some commenters suggested that educating retail investors about the appropriate use of limit orders was the appropriate remedy. Commenters also stated that restricting investors only to limit orders on the first day of trading will artificially constrain trading activity and could impair the process by which a market price is determined.

NASD is not persuaded by the commenters that banning market orders for IPOs on the first trading day will have significant effects on liquidity or price discovery. Institutional investors rely almost exclusively on limit orders in the IPO aftermarket. NASD requests further comment on why the use of limit orders by retail investors will not allow markets to develop sufficient liquidity or become an effective tool for price discovery.

c. Returned Shares

The IPO Advisory Committee offered a recommendation concerning IPO shares that are returned to the underwriter after completion of distribution. The Committee noted that currently if an IPO's shares trade at an immediate aftermarket premium, underwriters can allocate returned shares to favored customers at the IPO price, providing what might be a guaranteed profit to those customers. To address this concern, NASD solicited comment on a proposed rule change that would require underwriters first to allot returned shares to the existing syndicate short position. If there is no short position, or if the short position already has been covered by the time the shares are returned, the proposal would have permitted members to sell the remaining returned shares on the open market and return net profits to the issuer. The proposed rule change provided that if the market price does not rise above the offering price, then the underwriter would be permitted to sell the shares at a loss for its account or retain the shares by placing them in its investment account.

Commenters and SEC staff raised concerns that, among other things, the proposal's disposition of returned shares in the event that there is no existing short position may conflict with Regulation M. In response to these concerns, NASD has amended the proposed rule change to require that if no existing short position exists at the time that returned shares are received by a member firm, then the members must offer those shares to unfilled customers' orders *at the public offering price* pursuant to a random allocation methodology. While the proposed rule change does not specify a particular methodology, NASD expects that

members will develop systems similar to those used to allocate options exercise notices.[24] In general, these systems will require sequencing of all relevant accounts, assigning a sequence number to each account, and then generating a random number to identify where in the sequence to begin offering returned shares. According to the NASD, in requiring the use of a random allocation methodology, NASD prevents members from being in a position to benefit by selecting a particular customer or group of customers to receive a guaranteed profit.

d. Limitations on ''Friends and Family'' Programs

The IPO Advisory Committee recommended requiring that any lock-up that applies to shares owned by officers and directors include the shares purchased by those individuals in the ''friends and family'' program. In *Notice to Members* 03–72, NASD solicited comment on a proposed rule change to require that any lock-up or restriction on the transfer of the issuer's shares also apply to issuer-directed shares held by officers and directors of the issuer. According to the NASD, commenters generally supported this proposal. One commenter believed that this proposal should be effected by a listing requirement rather than an NASD rule. NASD disagrees. Insofar as the lock-up agreement is a contractual arrangement between the underwriter and the issuer, the NASD believes that imposing the requirement on the underwriter is appropriate.

e. Requirements Concerning Lock-Up Exemptions

The IPO Advisory Committee concluded that investors reasonably expect that the issuer's directors, officers, and large pre-IPO shareholders who agree to ''lock up'' their shares will be bound by those agreements for the stated period. The Committee recommended that the lead underwriter announce any lock-up exemption through a major news service. NASD's proposed rule change would require that the underwriting agreement provide that at least two business days before the release or waiver of any lock-up or other restriction on the transfer of the issuer's shares, the book-running lead manager will notify the issuer of the impending release or waiver and announce the impending release or waiver through a national news service.

Several commenters expressed concern that requiring the book-running lead manager to announce an impending release or waiver of a lock-up restriction on officers and directors would result in a large amount of meaningless information regarding sales of immaterial amounts of securities. NASD disagrees. According to the NASD, lock-up restrictions generally align the investment interest of the insiders subject to the lock-up with investors in the offering during the period of the lock-up. Thus, investors should find notifications of a lock-up release or waiver to be important and relevant information.

Another commenter questioned whether this notification requirement was intended to apply to the release of the issuer, selling shareholder, or both. According to the NASD, the proposed rule change will apply to a release or waiver of lock-ups by the issuer and any selling shareholder. While in many cases the release of an issuer will be followed by the filing of a registration statement before securities may be sold, that is not always the case (*e.g.*, Rule 144A offerings). Accordingly, NASD has not proposed to exempt waiver of issuer lock-ups from the proposed rule change.

One commenter also suggested that the notice requirement should be subject to some materiality or *de minimis* exception and should apply only if the release relates to a sale into the market. This commenter suggested that the notification requirement should not apply to a release that allows only for minor sales or transfers of stock in which the transferee agrees to lock-up restrictions identical to those applicable to the transferor, such as transfers by a shareholder to a family trust or to a charity. NASD does not support this modification. NASD believes that investors expect that lock-ups will be applied for their stated term, and that even small sales may be material information. NASD also does not believe that there should be an exemption where the transferee agrees to identical lock-up restrictions. According to the NASD, the fact that the shareholder or issuer no longer has accepted investment risk with regard to those securities is information that should be available to the market. In addition, if a transferee agrees to identical lock-up restrictions, any waiver or release of such restrictions as applied to such persons also must be preceded by a public announcement through a major news service.

A commenter suggested that the timing of the announcement should be based upon when a sale into the market may first take place, not when the release is to take place. Another commenter stated that two days' prior notice might not be sufficient. NASD believes that the timing of the announcement should be triggered by the release date, not the eventual sale date, and that two days seems to be an acceptable period.[25] In addition, if the waiver does not permit the immediate sale of securities into the market, then additional disclosure should be provided indicating when such sales may be permitted.

Finally, one commenter believed that disclosure by the issuer in Form 8–K would be sufficient. NASD disagrees. Form 8–K notification occurs after a sale has been made. NASD agrees with the IPO Advisory Committee that investors expect that lock-ups will be adhered to, and that they should be provided *advance* notice of any release or waiver.

f. Rulemaking Concerning the Pricing of Unseasoned Issuers

As discussed in *Notice to Members* 03–72, many IPO issuers in the late 1990s and 2000 had little or no revenues and subsequently experienced a dramatic run-up and decline in their stock price. Some critics have taken the position that the run-up demonstrates that these IPOs were underpriced; others have countered that the subsequent significant drop in the price of these securities, at times well below the IPO price, demonstrates that the offerings were actually overpriced. NASD solicited comment on three possible approaches to the regulation of IPO pricing of unseasoned issuers. Unlike the other items in *Notice to Members* 03–72, these were presented as concepts only and NASD did not propose specific rule text.

The first proposal was a requirement for an underwriter to retain an independent broker-dealer to opine that the initial IPO range at which the offering is marketed and the final offering price are reasonable and require that the independent broker-dealer's opinion is disclosed in the prospectus. Commenters generally did not support this proposal. The most common criticism was that the proposal would impose considerable cost on issuers. Commenters added that the cost of the independent opinion would be especially burdensome on smaller issuers. One commenter believed that the cost for the opinion would be affected by the assumption of liability that would result from the requirement to disclose the independent opinion in the prospectus. Another commenter argued that the responsibility for

[24] *See* Rule 2860(b)(23)(C).

[25] Tying the period of prior notice to a particular market or the average trading volume, as suggested by one commenter, would, in NASD's view, be unnecessarily complex.

recommending a public offering price should not be forced on another broker-dealer that is less involved in the offering process and likely to be less informed about the issuer and its securities. Several commenters noted that the independent broker-dealer rendering a pricing opinion would need to rely on information from the lead underwriter, or due diligence costs would be prohibitive. Finally, one commenter noted that issuers already have the ability to obtain independent pricing opinions from a second broker-dealer when they perceive a need for one.

In light of these concerns, NASD does not intend to propose a rule requiring an independent pricing opinion at this time.

The second proposal was to require the managing underwriter to use an auction or other system to collect indications of interest to help establish the final IPO price. Commenters expressed varying degrees of support for this proposal. Many commenters that appear to be individual investors supported implementation of the ''Dutch Auction'' though they offered little explanation. Other commenters opposed the adoption of any regulation that would require underwriters to use an auction approach to price setting. Several commenters stated that the market, and not regulators, should decide what pricing and allocation models are appropriate for particular IPOs. One commenter supported the development of alternatives to the bookbuilding process, but would not support the use of an auction as the only alternative. Finally, one commenter stated that the auction method is impractical for small broker-dealers because they are not familiar with this pricing mechanism.

Recent developments have focused increased attention on the use of auctions, and it appears that more issuers and investment banks are using or considering the use of auctions to assist in pricing IPOs. Given these developments, NASD finds it premature to mandate use of auction systems.

The third proposal was to require the managing underwriter to include a valuation disclosure section in the prospectus with information about how the managing underwriter and issuer arrived at the initial price range and final IPO price, such as reviewing the issuer's one-year projected earnings or P/E ratios and share price information of comparable companies. Commenters expressed varied levels of support for this proposal. Some commenters strongly supported the proposed valuation disclosure requirement. One such commenter suggested that the valuation disclosure should be accompanied by an explicit fiduciary duty making underwriters accountable for their IPO pricing decisions. This commenter expressed concern that valuation rationales and earnings estimates generally are made available only to the institutional market through the book-running underwriter's research analyst, creating an ''information monopoly'' that is inaccessible to smaller institutions and retail investors. This commenter stated that the inclusion of earnings estimates in the prospectus is a very important step in allowing all investors to receive equal access to IPO pricing information in order for the lead underwriter to develop a complete and accurate demand curve.

Several commenters noted that the initial price range and final price reflect a large number of factors, including current market conditions. One commenter noted that pricing determinations are based not only on information about the issuer, its past results, current financials, and projected earnings, but also on information about market interest, performance of the stock market in the days preceding pricing, and the willingness of the issuer to accept a lower share price to sell into a down market. Some commenters noted that much pricing information, such as the selection of comparable companies is subjective. One commenter noted that projections of future earnings are one of many data points used by investors to determine the price and quantity of shares they are interested in purchasing. This commenter noted that the market ultimately determines price, and price may be driven by ''market psychology'' and other factors that are difficult to quantify.

Several commenters also expressed reservations about the valuation disclosure proposal because it would open the issuer and underwriter to future litigation if the projections were not met. Some commenters suggested that any proposal related to disclosure of issuer projections would need to be accompanied by a safe harbor to protect issuers and underwriters from liability in future litigation. These commenters generally favored expansion of the safe harbor under Section 27A of the Securities Act of 1933 to IPOs.

Some commenters suggested that the SEC, rather than NASD, should address the matter of valuation disclosure since it involves a disclosure requirement for issuers. One commenter added that the SEC also would be able to address the attendant liability concerns affecting issuers and underwriters.

Based on the comments received, NASD believes that the SEC is the more appropriate regulator to address the inclusion of projections. The SEC regulates the contents of a prospectus and also is in a position to address issues of liability.

4. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act, which require, among other things, that NASD's rules 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. NASD believes that the new, specifically targeted provisions in the proposed rule changes will aid member compliance efforts and help to maintain investor confidence in the capital markets.

(B) Self-Regulatory Organizations' Statements on Burden on Competition

The NYSE and NASD do not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

(C) Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received from Members, Participants, or Others

The NYSE has neither solicited nor received written comments on the proposed rule change. NASD requested written comments in *Notice to Members* 03–72 as discussed in Section II(A)(1) above. Additionally, NASD requested written comments in *Notice to Members* 02–55 and received four comment letters.[26] According to the NASD, all of the comment letters generally supported the proposal. The National Venture Capital Association, the Association for Investment Management and Research (''AIMR'') and the North American Securities Administrators Association, Inc. (''NASAA'') supported the amendments. NASAA noted that many of the prohibitions go to conduct that already is unlawful.

The Securities Industry Association (''SIA'') stated that ''the new and

[26] National Venture Capital Association letter to Barbara Z. Sweeney (Sept. 9, 2002); the Association for Investment Management and Research letter to Barbara Z. Sweeney (Sept. 23, 2002); North American Securities Administrators Association, Inc. letter to Barbara Z. Sweeney (Sept. 23, 2002); and Securities Industry Association letter to Barbara Z. Sweeney (Sept. 24, 2002).

specifically targeted provisions in NASD Rule 2712 would aid member compliance efforts and help to maintain investor confidence in the capital markets.'' The SIA supports proposed NASD Rule 2712(a) but has concerns about how ''excessive'' compensation might be interpreted and suggests that the term be changed to ''clearly excessive.'' NASAA also noted that ''excessive'' compensation is not defined in the Rule and believes the term creates an exception that undermines the clarity of the provision. NASD believes that use of an ''excessive'' compensation standard takes into account all of the facts and circumstances surrounding the services provided. This flexibility would allow members and NASD to take into account the risk and effort involved in the transaction, usual and customary rates charged for similar services at broker/dealers in the same kind of business, and regional norms in setting prices for financial services.

As published in *Notice to Members* 02–55, proposed NASD Rule 2712 would have prohibited certain forms of aftermarket tie-in agreements. The SIA recommended that the language in the discussion section on aftermarket tie-ins ''clarify that inquiries and discussions regarding a potential customer's interest in purchasing and holding a security not be deemed solicitations for purposes of [the aftermarket tie-in provision].'' AIMR believes the provision may be difficult to supervise or monitor and suggests that NASD ''simply require heightened supervisory scrutiny of all IPO allocations and distributions.'' NASD has determined not to pursue a proposed rule change addressing aftermarket tie-in arrangements at the present time.

According to the NASD, the SIA supported the proposal to prohibit allocations to an executive officer or director as a condition or as consideration for investment banking business, but noted that it may be difficult to determine whether an allocation has been done as a condition or as consideration for investment banking business. The proposal as amended would bar IPO allocations to all executive officers and directors of a company with whom a member has an investment banking relationship.

As proposed in the *Notice to Members* 02–55, the amendments to NASD Rule 2710 would have required that a member file a statement with NASD regarding whether an executive officer or director participated in the selection of the book-running managing underwriter. The SIA noted that underwriters cannot know with certainty who participated in their selection or the significance of their roles. In addition, the SIA believes that the proposed requirement to file information under NASD Rule 2710(b)(6)(A)(viii) with respect to the 180-day calendar period immediately following the effective date of an offering would be burdensome. As discussed above, NASD has modified the proposal to eliminate the proposed amendment to NASD Rule 2710.

The SIA recommends that the time period specified in proposed NASD Rule 2712(c)(2)(A) commence on the offering date instead of the effective date of an offering. The SIA notes that the offering date tracks the language used in the standard agreement among underwriters, which is used by member firms to track the period in which a penalty bid may be used. NASD has amended the proposal to make the change suggested by the SIA. Accordingly, the ''offering date'' for purposes of the rule is the date after pricing on which members first sell shares to the public.

As proposed in *Notice to Members* 02–55, proposed NASD Rule 2712 would have included a requirement that each member subject to the rule must adopt and implement written procedures reasonably designed to ensure that the member and its employees comply with the provisions of the rule. NASAA notes that members already are required to implement procedures to ensure compliance with NASD rules and the provision is unnecessary. NASD agrees that such procedures already are required by members and the provision has been deleted.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such 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 SROs consent, the Commission will:

A. By order approve such proposed rule changes, or

B. Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing proposals, including whether the proposed rule changes are consistent with the Exchange Act and whether there are any differences between the NYSE and NASD proposals that present compliance or interpretive issues.

On October 13, 2004, the Commission approved the issuance of proposed amendments to Regulation M (the anti-manipulation rule governing securities offerings).[27] Among other things, the proposed amendments would amend Rule 104 of Regulation M to prohibit the use of penalty bids and would add a new Rule 106 to expressly prohibit distribution participants, issuers, and their affiliated purchasers, directly or indirectly, from demanding, soliciting, attempting to induce, or accepting from their customers any consideration in addition to the stated offering price of the security.[28] The Commission requests additional comment on any differences between the proposed amendments to Regulation M and the SRO proposed rule changes, particularly with respect to the proposals regarding penalty bids and quid pro quo allocations,[29] which may present compliance or interpretive issues.

In addition, the Commission specifically solicits comment on proposed NASD Rule 2712(b)(2) and NYSE Rule 470(B)(2), the so-called spinning restrictions. In particular, the Commission requests comment on the SROs' proposal to employ a rebuttable presumption with respect to members allocating IPO shares to an executive officer or director of a company (or person materially supported by such officer or director) if the member expects to receive or intends to seek investment banking business from the company in the next six months. We note that both the *NYSE/NASD IPO Advisory Committee, Report and Recommendations* (May 2003) (''IPO Report'') and the *Voluntary Initiative Regarding Allocations of Securities in ''Hot'' Initial Public Offerings to Corporate Executives and Directors* (April 28, 2003) (''Voluntary Initiative'') included absolute prohibitions on allocations of IPO shares to such persons.

The SRO proposed spinning restrictions would apply to persons

[27] *See* Securities Exchange Act Release No. 50831 (December 9, 2004), 69 FR 75774 (December 17, 2004), which is available at *http://www.sec.gov/rules/proposed/33-8511.htm.*

[28] *Id.*

[29] The proposed amendments to Rule 104 of Regulation M include a proposal to prohibit penalty bids altogether, whereas proposed NASD Rule 2712(c) and NYSE Rule 470(c) are based on the continued use of penalty bids. Another potential ''inconsistency'' may be a proposed new Rule 106 of Regulation M and proposed NYSE Rule 470(A) and NASD Rule 2712(a) regarding quid pro quo allocations. *See id.*

''materially supported'' by an executive officer or director.[30] The Commission requests comment on whether the proposed spinning restrictions should also apply to ''immediate family members'' who do not live in the same household and do not receive more than 25% of their ''income'' from the officer or director, as is the case with the Voluntary Initiative and the IPO Report.[31] Should the proposed spinning restrictions also prohibit investment banking personnel from participating in the member firm's allocation of IPO shares to specific individual customers, as in the Voluntary Initiative?

In addition, the Commission specifically solicits comment on whether the proposals concerning ''returned shares'' in NYSE Rule 470(D)(3) and NASD Rule 2712(e)(3) should clarify any possible implications under Regulation M, particularly with respect to continuation of the distribution.[32]

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File Nos. SR–NYSE–2004–12 and SR–NASD–2003–140. These file numbers 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. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal offices of the NYSE and NASD. All submissions should refer to File Nos. SR–NYSE–2004–12 and SR–NASD–2003–140 and should be submitted by January 18, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–P

[30] The SROs proposed to define ''material support'' to mean ''directly or indirectly providing more than 25% of a person's income in the prior calendar year. Persons living in the same household are deemed to be providing each other with material support.'' *See* NYSE Rule 470(F)(3) and NASD Rule 2712(d)(3).

[31] ''Material support'' is defined to include persons living in the same household or who receive more than 25% of their ''income'' from the officer or director. However, it may exclude close relations—such as a son or daughter—who do not live in the same household and to do not receive more than 25% of their ''income'' from the officer or director.

[32] *See* Rule 100 of Regulation M for definition of ''completion of participation in a distribution.'' 17 CFR 242.100. In order to comply with Regulation M, an underwriter or other distribution participant generally cannot commence trading in IPO securities in the secondary market unless they have completed their participation in the offering.

[33] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 4.5 (4½) percent for the January-March quarter of FY 2005.

James E. Rivera,

Associate Administrator for Financial Assistance.

[FR Doc. 04–28397 Filed 12–27–04; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; New System of Records and New Routine Use Disclosures

AGENCY: Social Security Administration (SSA).

ACTION: Proposed new system of records and proposed routine uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to establish a new system of records entitled *Medicare Part D and Part D Subsidy File, 60–0321,* and routine uses applicable to the system of records. We also are issuing notice that we may disclose personally identifiable information from the *Medicare Part D and Part D Subsidy File* to consumer reporting agencies in accordance with 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(e). We invite public comment on this proposal.

DATES: We filed a report of the proposed *Medicare Part D and Part D Subsidy File* and the applicable routine uses with the Chairman of the Senate Committee on Governmental Affairs, the Chairman of the House Committee on Government Reform, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 16, 2004. The proposed *Medicare Part D and Part D Subsidy File* system of records and the proposed routine uses will become effective on January 25, 2005, unless we receive comments warranting that they not be effective.

ADDRESSES: Interested individuals may comment on this publication by writing to the Executive Director, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Christine W. Johnson, Strategic Issues Team, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3–C–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, e-mail address at *chris.w.johnson@ssa.gov,* or by telephone at (410) 965–8563.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed New Medicare Part D and Part D Subsidy File System of Records

A. General Background

On December 8, 2003, the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003, was signed into law (Public Law 108–173). The MMA creates a voluntary prescription drug benefit program under new Part D of Medicare for all individuals eligible for Medicare Part A or Part B under which a monthly premium is required to assist in the purchase of prescription drugs. The new coverage, which is effective January 1, 2006, will assist Medicare-eligible seniors, people with disabilities and persons with end-stage renal disease with their prescription drug costs. In 2006, almost all of the 43 million Medicare beneficiaries will have a chance to enroll in the subsidized drug cost program.

The MMA also created a premium subsidy program for Medicare

beneficiaries with limited means. This program limits beneficiaries' premiums, co-payments and deductibles if they have low incomes and limited assets. Low-income status under Part D is income of less than 150% of the Federal poverty guidelines for a family of the applicable size. Low assets are resources of no more than $10,000 for an individual or $20,000 for a couple, which will change after 2006 according to the Consumer Price Index. We expect approximately 5 million beneficiaries to apply for the low-income assistance program in 2006 and about 3.3 million are expected to be approved.

The MMA introduces considerable changes to existing Medicare processes and supporting automation systems within SSA. For example, in response to the new legislation, SSA will implement significant enhancements to key programmatic and management information systems, create new Medicare-specific systems and databases, and enhance or create new data exchange agreements with multiple government agencies to support this initiative. The new enhancements will support—

- Selection of initial and subsequently entitled Medicare beneficiaries (*e.g.*, those who attain age 65 after the initial selection);
- Screening for individuals with low-income and limited assets, including ''deemed eligible'' individuals that do not need to apply for the premium subsidy;
- Prospective eligibility and effective month determinations (and subsequent redeterminations) for the Part D subsidy;
- Data exchanges with other government agencies for income and resource data;
- Generating and mailing outreach notices and applications to individuals potentially eligible for the premium subsidy;
- Subsidy calculations;
- Collection of subsidy application data via machine-readable application forms, the Internet and the Intranet; and
- Medicare Part D subsidy appeals.

To this end, the *Medicare Part D and Part D Subsidy File* will encompass all related information from the initial intake process through the administrative appeals process. Information from the application will be created, maintained and stored electronically and source systems within SSA will interface with the *Medicare Part D and Part D Subsidy File* to support the subsidy application process.

Because SSA will maintain and retrieve information from the proposed *Medicare Part D and Part D Subsidy File* using Social Security numbers (SSN) and/or names, the proposed *Medicare Part D and Part D Subsidy File* will constitute a ''system of records'' under the Privacy Act.

B. Collection and Maintenance of Data in the Medicare Part D and Part D Subsidy File System of Records

The *Medicare Part D and Part D Subsidy File* will include identifying information about beneficiaries and potential applicants for subsidy benefits administered by SSA. See the ''Categories of Records'' section of the notice below for a full description of the data that will be maintained in the system of records.

II. Proposed Routine Use Disclosures of Data Maintained in the Proposed Medicare Part D and Part D Subsidy File System of Records

A. Proposed Routine Use Disclosures

We are proposing to establish the following routine use disclosures of information that will be maintained in the proposed new *Medicare Part D and Part D Subsidy File* system of records:

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

We will disclose information under this routine use only in situations in which an individual may contact the Office of the President, seeking that Office's assistance in a matter relating to the *Medicare Part D and Part D Subsidy File.* Information will be disclosed when the Office of the President makes an inquiry and indicates that it is acting on behalf of the individual whose record is requested.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

We will disclose information under this routine use only in situations in which an individual may ask his or her congressional representative to intercede in a matter relating to the *Medicare Part D and Part D Subsidy File.* Information will be disclosed when the congressional representative makes an inquiry and indicates that he or she is acting on behalf of the individual whose record is requested.

3. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:

(a) SSA, or any component thereof, or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components

is party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before such tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

However, any information defined as ''return or return information'' under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) will not be disclosed unless authorized by the IRC, the Internal Revenue Service (IRS), or IRS Regulations.

We will disclose information under this routine use only as necessary to enable DOJ to effectively defend SSA, its components or employees in litigation involving the proposed system of records or when the United States is a party to litigation and SSA has an interest in the litigation.

4. Information may be disclosed to DOJ for:

(a) Investigating and prosecuting violations of the Social Security Act to which criminal penalties attach,

(b) Representing the Commissioner, or

(c) Investigating issues of fraud by agency officers or employees, or violation of civil rights.

We will disclose information under this routine use only as necessary to enable DOJ to represent SSA in matters concerning violations of the Social Security Act; to represent the Commissioner of Social Security or to investigate issues of fraud by SSA officers or employees or violation of civil rights.

5. To applicants, claimants, prospective applicants or claimants, other than the data subject, and their authorized representatives to the extent necessary for the purpose of pursuing Medicare Part D and Part D subsidy entitlement or appeals rights.

We will disclose information under this routine use only as necessary to enable authorized representatives to pursue entitlement to or appeal rights for the Medicare Part D or Part D subsidy on behalf of the claimant.

6. To Federal, State, or local agencies (or agents on their behalf) for administering cash or non-cash income maintenance or health maintenance programs (including programs under the

Social Security Act). Such disclosures include, but are not limited to, release of information to:

(a) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment and for administering the Railroad Unemployment Insurance Act;

(b) The Department of Veterans Affairs (VA) for administering 38 U.S.C. 412, and upon request, information needed to determine eligibility for or amount of VA benefits or verifying other information with respect thereto;

(c) The Department of Labor for administering provisions of Title IV of the Federal Coal Mine Health and Safety Act, as amended by the Black Lung Benefits Act;

(d) State agencies for making determinations of Medicaid eligibility;

(e) State agencies for making determinations of food stamp eligibility under the food stamp program;

(f) State audit agencies for auditing Medicaid eligibility considerations; and

(g) State welfare departments pursuant to agreements with SSA for administration of State supplementation payments; for enrollment of welfare recipients for medical insurance under section 1843 of the Act; and for conducting independent quality assurance reviews of Supplemental Security Income recipient records, provided that the agreement for Federal administration of the supplementation provides for such an independent review.

We will disclose information under this routine use only for the purpose of supporting other government agencies that administer programs which have the same compatible purposes as SSA programs, *e.g.*, eligibility, benefit amounts, or other matters of benefit status in a Social Security program and the information is relevant to determining the same matters in the other program.

7. To Internal Revenue Service, Department of the Treasury, for the purpose of auditing SSA's compliance with the safeguard provisions of the Internal Revenue Code of 1986, as amended.

This proposed routine use would allow the IRS to audit SSA's maintenance of earnings and wage information in the *Medicare Part D and Part D Subsidy File* to ensure that SSA complies with the safeguard requirements of the IRC.

8. To the Centers for Medicare & Medicaid Services (CMS), for the purpose of administering Medicare Part D enrollment and premium collection processes.

We will disclose information under this routine use only for the purpose of assisting in the administration of Medicare Part D enrollment and premium collection.

9. To Federal and State agencies for administering the Medicare Part D and Part D subsidy under the MMA of 2003. Such disclosures include, but are not limited to, release of information to:

(a) The Bureau of Public Debt, Department of Treasury;

(b) The Internal Revenue Service; and

(c) The Office of Child Support and Enforcement for the purpose of assisting in the verification of eligibility for the prescription drug subsidy.

We will disclose information under this routine use only for the purpose of supporting the administration of the prescription drug subsidy program under the MMA of 2003.

10. To a Federal, State, or congressional support agency (*e.g.*, the Congressional Budget Office and the Congressional Research Staff in the Library of Congress) for research, evaluation, or statistical studies. Such disclosures include, but are not limited to, release of information in assessing the extent to which one can predict eligibility for Supplemental Security Income (SSI) payments or Social Security disability insurance (SSDI) benefits; examining the distribution of Social Security benefits by economic and demographic groups and how these differences might be affected by possible changes in policy; analyzing the interaction of economic and non-economic variables affecting entry and exit events and duration in the Title II Old Age, Survivors, and Disability Insurance and the Title XVI SSI disability programs; and analyzing retirement decisions focusing on the role of Social Security benefit amounts, automatic benefit recomputation, the delayed retirement credit, and the retirement test, if SSA:

(a) Determines that the routine use does not violate legal limitations under which the record was provided, collected or obtained;

(b) Determines that the purpose for which the proposed use is to be made:

(i) Cannot reasonably be accomplished unless the record is provided in a form that identifies individuals;

(ii) Is of sufficient importance to warrant the effect on, or risk to, the privacy of the individual which such limited additional exposure of the record might bring;

(iii) Has reasonable probability that the objective of the use would be accomplished;

(iv) Is of importance to the Social Security program or the Social Security beneficiaries or is for an epidemiological research project that relates to the Social Security program or beneficiaries;

(c) Requires the recipient of information to:

(i) Establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record and agree to on-site inspection by SSA's personnel, its agents, or by independent agents of the recipient agency of those safeguards;

(ii) Remove or destroy the information that enables the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient receives written authorization from SSA that it is justified, based on research objectives, in retaining such information;

(iii) Make no further use of the records except

(a) Under emergency circumstances affecting the health or safety of any individual following written authorization from SSA;

(b) For disclosure to an identified person approved by SSA for the purpose of auditing the research project;

(iv) Keep the data as a system of statistical records. A statistical record is one which is maintained only for statistical and research purposes and which is not used to make any determination about an individual;

(d) Secures a written statement by the recipient of the information attesting to the recipient's understanding of, and willingness to abide by, these provisions.

We will disclose information under this routine use only for the purpose of allowing new studies to occur regarding the administration of the Social Security program and other related programs.

11. To the Department of Homeland Security, Bureau of Citizenship and Immigration Services (BCIS), upon request, to identify and locate aliens in the United States pursuant to section 290(b) of the Immigration and Nationality Act (8 U.S.C. 1360(b)).

We will disclose information under this routine use only for the purpose of identifying and locating illegal aliens pursuant to section 290(b) of the Immigration and Nationality Act (8 U.S.C. 1360(b)).

12. To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations

in which SSA may enter a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

SSA occasionally contracts out certain of its functions when this would contribute to effective and efficient operations. SSA must be able to give a contractor whatever information the Agency can legally provide in order for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract.

13. To addresses of beneficiaries who are obligated on loans held by the Secretary of Education or a loan made in accordance with 20 U.S.C. 1071, *et seq.* (the Robert T. Stafford Student Loan Program) may be disclosed to the Department of Education as authorized by section 489A of the Higher Education Act of 1965.

Under this routine use we will disclose only address information to the Secretary of Education for the purpose of locating beneficiaries that are obligated on loans held by the Secretary.

14. To student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and who need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

Under certain Federal statutes, SSA is authorized to use the service of volunteers and participants in certain educational, training, employment and community service programs. An example of such statutes and programs includes: 5 U.S.C. 2753 regarding the College Work-Study Program. We contemplate disclosing information under this routine use only when SSA uses the services of these individuals, and they need access to information in this system to perform their assigned agency duties.

15. To Federal, State and local law enforcement agencies and private security contractors as appropriate, information necessary:

- To enable them to protect the safety of SSA employees and customers, the security of SSA workplace and the operation of SSA facilities, or
- To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of SSA facilities.

We will disclose information under this routine use to law enforcement agencies and private security contractors when information is needed to respond to, investigate, or prevent activities that jeopardize the security and safety of SSA customers, employees or workplaces or that otherwise disrupt the operation of SSA facilities. Information would also be disclosed to assist in the prosecution of persons charged with violating Federal or local law in connection with such activities.

16. To the General Services Administration (GSA) and the National Archives Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, non-tax return information which is not restricted from disclosure by Federal law for the use of those agencies in conducting records management studies.

The Administrator of GSA and the Archivist of NARA are charged by 44 U.S.C. 2904, as amended, with promulgating standards, procedures and guidelines regarding record management and conducting records management studies. 44 U.S.C. 2906, as amended, provides that GSA and NARA are to have access to federal agencies' records and that agencies are to cooperate with GSA and NARA. In carrying out these responsibilities, it may be necessary for GSA and NARA to have access to this proposed system of records. In such instances, the routine use will facilitate disclosure.

B. Compatibility of Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(b)(3)) and SSA's disclosure regulation (20 CFR part 401) permit us to disclose information under a published routine use for a purpose that is compatible with the purpose for which we collected the information. SSA's Regulations at 20 CFR 401.150(c) permit us to disclose information under a routine use where necessary to carry out SSA programs. SSA's Regulations at 20 CFR 401.120 provide that we will disclose information when a law specifically requires the disclosure. The proposed routine uses numbered 1 through 10, 12, 14, and 15 above will ensure efficient administration of SSA programs administered through the proposed *Medicare Part D and Part D Subsidy File;* the disclosures that would be made under routine uses number 11, 13, and 16 are required by law. The proposed routine uses are appropriate and meet the relevant statutory and regulatory criteria.

III. Disclosure to Consumer Reporting Agencies

The Privacy Act of 1974, as amended (5 U.S.C. 552a(b)(12)) permits Federal agencies to disclose certain information to consumer reporting agencies in accordance with 31 U.S.C. 3711(e) without the consent of the individuals to whom the information pertains. The purpose of this disclosure is to provide an incentive for individuals to pay any outstanding debts they owe to the Federal government by including information about these debts in the records relating to those persons maintained by consumer reporting agencies. This is a practice commonly used by the private sector. The information disclosed will be limited to that which is needed to establish the identity of the individual debtor, the amount, status, and history of the debt, and the agency or program under which the debt arose.

We have added the following statement at the end of the routine uses section of the proposed system of records:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701, *et seq.*), as amended. The disclosure will be made in accordance with 31 U.S.C. 3711(e) when authorized by sections 204(f), 808(e), or 1631(b)(4) of the Social Security Act (42 U.S.C. 404(f), 1008(e), or 1383(b)(4)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government, typically, to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records. The information to be disclosed is limited to the individual's name, address, SSN, and other information necessary to establish the individual's identity, the amount, status, and history of the debt and the agency or program under which the debt arose.

IV. Records Storage Medium and Safeguards for the Proposed Medicare Part D and Part D Subsidy File System of Records

The Medicare Part D and Part D Subsidy File is a repository. Only authorized SSA personnel who have a need for the information in the performance of their official duties will be permitted access to the information. We will safeguard the security of the information by requiring the use of access codes to enter the computer systems that will maintain the data and will store computerized records in secured areas that are accessible only to employees who require the information to perform their official duties. Any manually maintained records will be

kept in locked cabinets or in otherwise secure areas. Furthermore, SSA employees having access to SSA databases maintaining personal information must sign a sanction document annually, acknowledging their accountability for making unauthorized access to or disclosure of such information.

Contractor personnel having access to data in the *Medicare Part D and Part D Subsidy File* will be required to adhere to SSA rules concerning safeguards, access and use of the data.

SSA personnel having access to the data on this system will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in this system. *See* 5 U.S.C. 552a(i)(1).

V. Effect of the Proposed Medicare Part D and Part D Subsidy File System of Records on the Rights of Individuals

The proposed new *Medicare Part D and Part D Subsidy File* system of records will maintain only that information that is necessary for the efficient and effective control and processing of subsidy applications from the initial phase through the appeals process. Security measures will be employed that protect access to and preclude unauthorized disclosure of records in the proposed system of records. Therefore, we do not anticipate that the proposed system of records will have an unwarranted adverse effect on the rights of individuals.

Dated: December 16, 2004.

Jo Anne B. Barnhart,

Commissioner.

Social Security Administration (SSA) Notice of System of Records Required by the Privacy Act of 1974

SYSTEM NUMBER:

60–0321.

SYSTEM NAME:

Medicare Part D and Part D Subsidy File, Social Security Administration, Deputy Commissioner for Disability and Income Security Programs.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The *Medicare Part D and Part D Subsidy File* is virtually established before applications are mailed to potentially eligible beneficiaries, when applications are filed through the Internet, in Social Security field offices, or a lead is expected to result in a claim, and maintained in the National Computer Center at SSA Headquarters. The computerized records and database are maintained at the Social Security Administration, Office of Systems, 6401 Security Boulevard, Baltimore, Maryland 21235.

Other authorized Federal and State agencies that generally have access to information in SSA systems will also have access as needed to the *Medicare Part D and Part D Subsidy File*. Contact the system manager for address information.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Claimants, applicants, beneficiaries, ineligible spouses and potential claimants for Medicare Advantage Part C and Medicare Part D and drug prescription premium and co-payment subsidies.

CATEGORIES OF RECORDS IN THE SYSTEM:

The *Medicare Part D and Part D Subsidy File* contains the name and Social Security number (SSN) of the claimant or potential claimant and may contain the subsidy application; supporting evidence and documentation for eligibility; documentation for income and resource verification; supporting evidence and documentation for appeal requests; premium payment documentation; correspondence to and from claimants and/or personal representatives; and leads information from third parties such as social service agencies and hospitals.

The *Medicare Part D and Part D Subsidy File* also may contain data collected as a result of inquiries or complaints, and evaluation and measurement studies of the effectiveness of Medicare Prescription Drug Improvement and Modernization Act (MMA) policies. Separate files may be maintained of certain actions, which are entered directly into the *Medicare Part D and Part D Subsidy File*. These relate to reports of changes of income and resources, and other post-adjudicative reports. Separate data are also maintained for statistical purposes (*i.e.*, subsidy denial, and demographic and statistical information relating to subsidy decisions).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 202–205, 223, 226, 228, 1611, 1631, 1818, 1836, 1840 and 1860D–1–1860D–15 of the Social Security Act (42 U.S.C. §§ 402–405, 423, 426, 428, 1382, 1383, 1395i–2, 1395o, 1395s and 1395w–101–1395w–115).

PURPOSE(S):

The *Medicare Part D and Part D Subsidy File* contains material related to the request for subsidized prescription drug coverage under the MMA of 2003. Medicare Part D and Part D subsidy claim file information is used throughout SSA for the purposes of collecting, documenting, organizing and maintaining information and documents for making determinations of eligibility for subsidized benefits, the amount of the subsidy, processing appeals; ensuring that proper adjustments are made based on events affecting entitlement; and answering inquiries.

Medicare Part D and Part D subsidy claim file information may be used for quality review, evaluation, and measurement studies, and other statistical and research purposes. Extracts may be maintained as interviewing tools, activity logs, records of claims clearance, and records of type or nature of actions taken.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below. However, any information defined as ''return or return information'' under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) will not be disclosed unless authorized by the IRC, the Internal Revenue Service (IRS), or IRS regulations.

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

3. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:

(a) SSA, or any component thereof, or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components

is party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before such tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

However, any information defined as ''return or return information'' under 26 U.S.C. 6103 of the Internal Revenue Code will not be disclosed unless authorized by the IRC, the Internal Revenue Service, or IRS Regulations.

4. Information may be disclosed to DOJ for:

(a) Investigating and prosecuting violations of the Social Security Act to which criminal penalties attach,

(b) Representing the Commissioner, or

(c) Investigating issues of fraud by agency officers or employees, or violation of civil rights.

5. To applicants, claimants, prospective applicants or claimants, other than the data subject, and their authorized representatives to the extent necessary for the purpose of pursuing Medicare Part D and Part D subsidy entitlement or appeal rights.

6. To Federal, State, or local agencies (or agents on their behalf) for administering cash or non-cash income maintenance or health maintenance programs (including programs under the Social Security Act). Such disclosures include, but are not limited to, release of information to:

(a) The Railroad Retirement Board for administering provisions of the Railroad Retirement and Social Security Acts relating to railroad employment and for administering the Railroad Unemployment Insurance Act;

(b) The Department of Veterans Affairs (VA) for administering 38 U.S.C. 412, and upon request, information needed to determine eligibility for, or amount of, VA benefits or verifying other information with respect thereto;

(c) The Department of Labor for administering provisions of Title IV of the Federal Coal Mine Health and Safety Act, as amended by the Black Lung Benefits Act;

(d) State agencies for making determinations of Medicaid eligibility; and

(e) State agencies for making determinations of food stamp eligibility under the food stamp program;

(f) State audit agencies for auditing Medicaid eligibility considerations; and

(g) State welfare departments pursuant to agreements with SSA for administration of State supplementation payments; for enrollment of welfare recipients for medical insurance under section 1843 of the Act; and for conducting independent quality assurance reviews of Supplemental Security Income recipient records, provided that the agreement for Federal administration of the supplementation provides for such an independent review.

7. To the Internal Revenue Service, Department of the Treasury, for the purpose of auditing SSA's compliance with the safeguard provisions of the Internal Revenue Code of 1986, as amended.

8. To the Centers for Medicare & Medicaid Services (CMS), for the purpose of administering Medicare Part D enrollment and premium collection.

9. To Federal and State agencies administering Medicare Part D and Part D subsidy under the MMA of 2003. Such disclosure include release of information to:

(a) The Bureau of Public Debt, Department of the Treasury;

(b) The Internal Revenue Service; and

(c) The Office of Child Support and Enforcement for the purpose of assisting in the verification of eligibility for the prescription drug subsidy.

10. To a Federal, State, or congressional support agency (*e.g.*, the Congressional Budget Office and the Congressional Research Service in the Library of Congress) for research, evaluation, or statistical studies. Such disclosures include, but are not limited to, release of information in assessing the extent to which one can predict eligibility for Supplemental Security Income (SSI) payments or Social Security disability insurance benefits; examining the distribution of Social Security benefits by economic and demographic groups and how these differences might be affected by possible changes in policy; analyzing the interaction of economic and non-economic variables affecting entry and exit events and duration in the Title II Old Age, Survivors, and Disability Insurance and the Title XVI SSI disability programs; and analyzing retirement decisions focusing on the role of Social Security benefit amounts, automatic benefit recomputation, the delayed retirement credit, and the retirement test, if SSA:

(a) Determines that the routine use does not violate legal limitations under which the record was provided, collected, or obtained;

(b) Determines that the purpose for which the proposed use is to be made:

(i) Cannot reasonably be accomplished unless the record is provided in a form that identifies individuals;

(ii) Is of sufficient importance to warrant the effect on, or risk to, the privacy of the individual which such limited additional exposure of the record might bring;

(iii) Has reasonable probability that the objective of the use would be accomplished;

(iv) Is of importance to the Social Security program or the Social Security beneficiaries or is for an epidemiological research project that relates to the Social Security program or beneficiaries;

(c) Requires the recipient of information to:

(i) Establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record and agree to on-site inspection, by SSA's personnel, its agents, or by independent agents of the recipient agency, of those safeguards;

(ii) Remove or destroy the information that enables the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient receives written authorization from SSA that it is justified, based on research objectives, for retaining such information;

(iii) Make no further use of the records except

(a) Under emergency circumstances affecting the health or safety of any individual following written authorization from SSA;

(b) For disclosure to an identified person approved by SSA for the purpose of auditing the research project;

(iv) Keep the data as a system of statistical records. A statistical record is one which is maintained only for statistical and research purposes and which is not used to make any determination about an individual;

(d) Secures a written statement by the recipient of the information attesting to the recipient's understanding of, and willingness to abide by, the provisions.

11. The Department of Homeland Security, Bureau of Citizenship and Immigration Services, upon request, to identify and locate aliens in the United States pursuant to section 290(b) of the Immigration and Nationality Act (8 U.S.C. 1360(b)).

12. To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

13. Addresses of beneficiaries who are obligated on loans held by the Secretary of Education or a loan made in accordance with 20 U.S.C. 1071, *et seq.* (the Robert T. Stafford Student Loan Program) may be disclosed to the Department of Education as authorized by section 489A of the Higher Education Act of 1965.

14. To student volunteers and other workers, who technically do not have the status of Federal employees, when

they are performing work for SSA as authorized by law, and who need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

15. To Federal, State and local law enforcement agencies and private security contractors, as appropriate, information necessary:

• To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace and the operation of SSA facilities, or

• To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of SSA facilities.

16. To the General Services Administration (GSA) and the National Archives Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, non-tax return information which is not restricted from disclosure by Federal law for the use of those agencies in conducting records management studies.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701, *et seq.*), as amended. The disclosure will be made in accordance with 31 U.S.C. 3711(e) when authorized by sections 204(f), 808(e), or 1631(b)(4) of the Social Security Act (42 U.S.C. 404(f), 1008(e), or 1383(b)(4)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government, typically, to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records. The information to be disclosed is limited to the individual's name, address, SSN, and other information necessary to establish the individual's identity, the amount, status, and history of the debt and the agency or program under which the debt arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained electronically.

RETRIEVABILITY:

Medicare Part D and Part D subsidy claim files are retrieved electronically by SSN and alphabetically by name.

SAFEGUARDS:

Medicare Part D and Part D subsidy claim files are protected through limited access to SSA records. Access to the records is limited to those employees who require such access in the performance of their official duties. All employees are instructed about SSA confidentiality rules as a part of their initial orientation training.

Safeguards for automated records have been established in accordance with the Systems Security Handbook. For computerized records, electronically transmitted between SSA's central office and field office locations (including organizations administering SSA programs under contractual agreements), safeguards include a lock/unlock password system, exclusive use of leased telephone lines, a terminal oriented transaction matrix, and an audit trail.

RETENTION AND DISPOSAL:

Pursuant to 36 CFR 1228.26, SSA will submit to NARA for approval a schedule for the Medicare Part D and Part D Subsidy File no later than one year from implementation of this new program. Until a schedule is developed and approved, records may not be destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Commissioner, Disability and Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record about him/her by writing to the system manager(s) at the above address and providing his/her name, SSN or other information that may be in the system of records that will identify him/her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license or some other means of identification. If an individual does not have any identification documents sufficient to establish his/her identity, the individual must certify in writing that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels the record for which notification is being requested. If it is determined that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his/her name, SSN, address, date of birth and place of birth along with one other piece of information such as mother's maiden name) and ask for his/her consent to providing information to the requesting individual.

If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his/her identity or must certify in the request that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense. These procedures are in accordance with SSA Regulations (20 CFR 401.40).

RECORD ACCESS PROCEDURES:

Same as Notification procedures. Requesters should also reasonably specify the information they are seeking. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c) and 401.55).

CONTESTING RECORD PROCEDURES:

Same as Notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65).

RECORD SOURCE CATEGORIES:

Information in this system is obtained from claimants, beneficiaries, applicants and recipients; accumulated by SSA from reports of employers or self-employed individuals; various local, State, and Federal agencies; claimant representatives and other sources, to support factors of entitlement and continuing eligibility or to provide leads information.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 04–28302 Filed 12–27–04; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; as Amended; New System of Records and New Routine Use Disclosures

AGENCY: Social Security Administration (SSA).

ACTION: Proposed new system of records and proposed routine uses.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to establish a new system of records entitled the Non-Attorney Representative Prerequisites Process File, 60–0355, and routine uses applicable to this system of records. Hereinafter, we will refer to the proposed system of records as the NARPPF system. The proposed system of records will consist of information used to determine the eligibility of a non-attorney who represents claimants before SSA to participate in the demonstration project for direct payment of fees. We invite public comments on this proposal.

DATES: We filed a report of the proposed new system of records and proposed routine use disclosures with the Chairman of the Senate Committee on Governmental Affairs, the Chairman of the House Committee on Government Reform, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 14, 2004. The proposed system of records and routine uses will become effective on January 23, 2005, unless we receive comments warranting them not to become effective.

ADDRESSES: Interested individuals may comment on this publication by writing to the Executive Director, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Vincent A. Dormarunno, Supervisory Social Insurance Specialist, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, e-mail address at *Vincent.A.Dormarunno@ssa.gov*, or by telephone at (410) 965–3669.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed New System of Records Entitled the NARPPF System

A. General Background

The Social Security Protection Act of 2004 (SSPA) requires the Commissioner of Social Security to develop and implement a 5-year nationwide demonstration project that will extend to certain non-attorney representatives of claimants under titles II and XVI of the Social Security Act the option to have approved fees for their representation withheld and paid directly from a beneficiary's past-due benefits. Currently, by statute this option is available only to representatives who are attorneys.

Non-attorney representatives who wish to participate in the demonstration project must meet the prerequisites specified in section 303 of the SSPA, and any additional prerequisites that the Commissioner may prescribe.

B. Collection and Maintenance of the Data for the Proposed New System of Records Entitled the NARPPF System

SSA and/or its agents will collect and maintain the information that will be housed in the NARPPF system from applicants who have requested participation in the Non-Attorney Representative Demonstration Project. The information maintained in this system of records will be maintained in manual and electronic formats and will include information on all applications for participation. Specifically, it will contain some or all of the following: (1) Application information, including filing date and fee information; (2) the applicant's identifying information, including name, Social Security number (SSN), date and place of birth, business address, telephone numbers, e-mail addresses, fax numbers and fingerprints; (3) a work history, including employer names and addresses, dates of employment, self-employment information, and verification of employment; (4) the applicant's educational background and continuing education; (5) certain integrity information including previous Federal employment, suspensions and/or terminations of representative authorization, criminal background, and circumstances for previous employment termination, if applicable; (6) examination and examination results; (7) professional liability insurance information; (8) background check and report information; (9) direct payment eligibility status; (10) post-application discovery information including previously undisclosed eligibility information; and (11) post-eligibility audit and evaluation information. We will retrieve information from the proposed system of records by using the individual's name and/or SSN. Thus the NARPPF system will constitute a system of records under the Privacy Act.

II. Proposed Routine Use Disclosures of Data Maintained in the Proposed NARPPF System

A. Proposed Routine Use Disclosures

We are proposing to establish routine uses of information that will be maintained in the proposed NARPPF system as discussed below.

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

We will disclose information under this routine use only in situations in which an individual may contact the Office of the President, seeking that Office's assistance in a matter relating to information contained in this system of records. Information will be disclosed when the Office of the President makes an inquiry and indicates that it is acting on behalf of the individual whose record is requested.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

We will disclose information under this routine use only in situations in which an individual may ask his or her congressional representative to intercede in a matter relating to information contained in this system of records. Information will be disclosed when the congressional representative makes an inquiry and indicates that he or she is acting on behalf of the individual whose record is requested.

3. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) the United States or any agency thereof where SSA determines that the litigation is likely to affect the operation of SSA or any of its components, is party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before such tribunal, is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the

purpose for which the records were collected.

We will disclose information under this routine use only as necessary to enable DOJ to effectively defend SSA, its components or employees in litigation involving the proposed new system of records and ensure that courts and other tribunals have appropriate information.

4. To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an Agency function relating to this system of records.

We will disclose information under this routine use only in situations in which SSA may enter into a contractual agreement or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

5. To student volunteers, individuals working under a personal service contract, participant contractors and other individuals performing functions for SSA, but technically not having the status of Agency employees, if they need access to the records in order to perform their assigned agency functions.

Under certain Federal statutes, SSA is authorized to use the service of volunteers and participants in certain educational, training, employment and community service programs. Examples of such statutes and programs include: 5 U.S.C. 3111 regarding student volunteers and 42 U.S.C. 2753 regarding the College Work-Study Program. We contemplate disclosing information under this routine use only when SSA uses the services of these individuals, and they need access to information in this system to perform their assigned Agency duties.

6. Non-tax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

The Administrator of GSA and the Archivist of NARA are charged by 44 U.S.C. 2904, as amended, with promulgating standards, procedures and guidelines regarding record management and conducting records management studies. 44 U.S.C. 2906, as amended, provides that GSA and NARA are to have access to Federal agencies' records and that agencies are to cooperate with GSA and NARA. In carrying out these responsibilities, it may be necessary for GSA and NARA to have access to this proposed system of records. In such instances, the routine use will facilitate disclosure.

7. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary:

- To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace, and the operation of SSA facilities, or
- To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of SSA facilities.

We will disclose information under this routine use to law enforcement agencies and private security contractors when information is needed to respond to, investigate, or prevent activities that jeopardize the security and safety of SSA customers, employees or workplaces or that otherwise disrupt the operation of SSA facilities. Information would also be disclosed to assist in the prosecution of persons charged with violating Federal or local law in connection with such activities.

8. To inform a claimant/beneficiary that his/her representative is eligible to participate in the demonstration project or has been disqualified or suspended from participating in the demonstration project and/or from further representations before SSA.

We will inform individuals if their participating representative has been determined to be eligible to participate in the demonstration project or has been disqualified or suspended from further participation in this demonstration project and/or has been disqualified or suspended from further representation before SSA.

9. SSA may disclose information to a State agency or other certifying entity that uses such eligibility information in their certifying procedures.

We may disclose certain eligibility information to certifying entities for social workers, health care workers or others requiring such certifications, who have chosen to apply for participation in this demonstration project.

10. SSA may disclose information to contractors under contract to SSA and/or under contract to another agency with funds provided by SSA, for the performance of research, evaluation and statistical activities directly relating to this system of records.

We may disclose certain information to contractors under contract to SSA or another agency with funds provided by SSA, for the purpose of researching, evaluating and/or providing statistical information directly relating to the activities covered by this system of records.

B. Compatibility of Proposed Routine Uses

The Privacy Act (5 U.S.C. 552a(b)(3)) and our disclosure regulations (20 CFR part 401) permit us to disclose information under a published routine use for a purpose that is compatible with the purpose for which we collected the information. Section 401.150(c) of SSA Regulations permits us to disclose information under a routine use where necessary to carry out SSA programs. SSA Regulations at § 401.120 provide that we will disclose information when a law specifically requires the disclosure. The proposed routine uses numbered 1 through 5 and numbered 7 through 10 above will ensure efficient administration of the NARPPF system; the disclosure that would be made under routine use number 6 is required by Federal law. Thus, all routine uses are appropriate and meet the relevant statutory and regulatory criteria.

III. Records Storage Medium and Safeguards for the Proposed New System Entitled the NARPPF System

SSA will maintain information in the NARPPF system in electronic and paper form. Only authorized SSA and contractor personnel who have a need for the information in the performance of their official duties will be permitted access to the information. We will safeguard the security of the information by requiring the use of access codes to enter the computer system that will maintain the data and will store computerized records in secured areas that are accessible only to employees who require the information to perform their official duties. Any manually maintained records will be kept in locked cabinets or in otherwise secure areas.

Contractor personnel having access to data in the proposed system of records will be required to adhere to SSA rules concerning safeguards, access to and use of the data.

SSA and contractor personnel having access to the data on this system will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in this system. *See* 5 U.S.C. 552a(i)(1).

IV. Effect of the Proposed New System of Records Entitled NARPPF

The proposed new system of records will maintain only that information

relevant to determining the eligibility of applicants that request participation in the section 303 Demonstration Project Extending Direct Payments to Non-Attorney Representatives. Additionally, SSA will adhere to all applicable provisions of the Privacy Act, Social Security Act and other Federal statutes that govern our use and disclosure of the information. Thus, we do not anticipate that the proposed system of records will have an unwarranted effect on the privacy of the individuals that will be covered by the NARPPF system.

Dated: December 14, 2004.

Jo Anne B. Barnhart,

Commissioner.

Social Security Administration (SSA), Notice of System of Records, Required by the Privacy Act of 1974; as Amended.

System number:

60–0355.

System name:

Non-Attorney Representative Prerequisites Process File (NARPPF), Social Security Administration, Deputy Commissioner for Disability and Income Security Programs, Office of Hearings and Appeals.

Security classification:

None.

System location:

Social Security Administration, Deputy Commissioner for Disability and Income Security Programs, Office of Hearings and Appeals, 5107 Leesburg Pike, Falls Church, Virginia, 22041.

Categories of individuals covered by the system:

Any non-attorney individual who applies to participate in the demonstration project for direct payment of fees under section 303 of the Social Security Protection Act of 2004 (SSPA) (Public Law No. 108–203). Applications for participation will be filed directly with a contract vendor.

Categories of records in the system:

Demonstration project application and supporting documentation, and corresponding eligibility determination. This may include some or all of the following: (1) Application information, including filing date and fee information; (2) the applicant's identifying information, including name, Social Security number, date and place of birth, business address, telephone numbers, e-mail addresses, fax numbers and fingerprints; (3) a work history, including employer names and addresses, dates of employment, self-employment information, and verification of employment; (4) the applicant's educational background and continuing education; (5) certain integrity information including previous Federal employment, suspensions and/or terminations of representative authorization, criminal background, and circumstances for previous employment termination, if applicable; (6) examination and examination results; (7) professional liability insurance information; (8) background check and report information; (9) direct payment eligibility status; (10) post-application discovery information including previously undisclosed eligibility information; and (11) post-eligibility audit and evaluation information.

Authority for maintenance of the system:

Section 303 of the SSPA.

Purpose(s):

The prerequisites process application files will be used to determine the eligibility of a non-attorney representative who represents claimants before SSA to participate in the demonstration project for the direct payment of fees.

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Disclosures may be made for routine uses as indicated below. However, disclosure of any information defined as ''return or return information'' under 26 U.S.C. 6103 of the Internal Revenue Code (IRC) will not be disclosed unless authorized by a statute, the Internal Revenue Service (IRS), or IRS regulations.

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

3. To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:

(a) SSA, or any component thereof; or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components, is party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court or other tribunal, or another party before such tribunal, is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected. Wage and other information which is subject to the provisions of the IRC (26 U.S.C. 6103) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

4. To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter into a contractual or similar agreement with a third party to assist in accomplishing an Agency function relating to this system of records.

5. To student volunteers, individuals working under a personal services contract, and other individuals performing functions for SSA, but technically not having the status of Agency employees, if they need access to the records in order to perform their assigned agency functions.

6. Non-tax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906, as amended by the NARA Act of 1984, for the use of those agencies in conducting records management studies.

7.To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary:

- To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace, the operation of SSA facilities, or
- To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of SSA facilities.

8. To inform a claimant/beneficiary that his/her representative is eligible to participate in the demonstration project or has been disqualified or suspended from participating in the demonstration project and/or from further representation before SSA.

9. To a State agency or other certifying entity that uses such eligibility information in their certifying procedures.

10. To contractors under contract to SSA and/or under contract to another agency with funds provided by SSA, for the performance of research, evaluation and statistical activities directly relating to this system of records.

Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System:

Storage:

Records in this system are stored electronically and in paper form.

Retrievability:

Records in this system are indexed and retrieved by the name and SSN of the demonstration project applicant.

Safeguards:

Security measures include the use of access codes to enter the computer system which will maintain the data, and the storage of computerized records in secured areas which are accessible only to employees who require the information in performing their official duties. Any manually maintained records will be kept in locked cabinets or in otherwise secure areas. SSA employees who have access to the data will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in the system. *See* 5 U.S.C. 552a(i)(1).

Contractor personnel having access to data in the system of records will be required to adhere to SSA rules concerning safeguards, access and use of the data.

Retention and disposal:

Applications and supporting documentation are held for a minimum of 7 years. Paper files are destroyed by shredding when deemed appropriate. Computer files are archived after 12 months.

System manager(s) and address:

Director, Office of Policy, Planning and Evaluation, Office of Hearings and Appeals, 5107 Leesburg Pike, Falls Church, VA 22041.

Notification procedure(s):

An individual can determine if this system contains a record about him/her by writing to the systems manager(s) at the above address and providing his/her name, SSN or other information that may be in the system of records that will identify him/her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license or some other means of identification. If an individual does not have any identification documents sufficient to establish his/her identity, the individual must certify in writing that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense. (20 CFR 401.45.)

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels the record to which notification is being requested. If it is determined that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his/her name, SSN, address, date of birth and place of birth along with one other piece of information such as mother's maiden name) and ask for his/her consent in providing information to the requesting individual. (20 CFR 401.45.) If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his/her identity or must certify in the request that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense. These procedures are in accordance with SSA Regulations (20 CFR 401.45).

Record access procedure(s):

Same as Notification procedures. Requesters also should reasonably specify the record contents they are seeking. These access procedures are in accordance with SSA Regulations (20 CFR 401.50).

Contesting record procedure(s):

Same as Notification procedures. Requesters also should reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is untimely, incomplete, inaccurate or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65).

Record source categories:

Applications, supporting documentation, eligibility criteria, and corresponding eligibility determinations. As a part of the eligibility criteria, SSA may compare records from the Representative Disqualification/Suspension Information System (#60–0219) with those contained in the NARPPF system.

Systems exempt from certain provisions of the Privacy Act:

None.

[FR Doc. 04–28303 Filed 12–27–04; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4943]

Culturally Significant Objects Imported for Exhibition Determinations: ''Jacques-Louis David: Empire to Exile''

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, 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 ''Jacques-Louis David: Empire to Exile'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the J. Paul Getty Museum, Los, Angeles, California, from on or about February 24, 2005 to on or about April 24, 2005, and at the Sterling and Francine Clark Art Institute, Williamstown, Massachusetts, from on or about June 5, 2005 to on or about September 5, 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 Wolodymyr R. Sulzynsky, the Office of the Legal Adviser, Department of State, (telephone: 202/453–8050). The address is: Department of State, SA–44, and 301 4th Street, SW., Room 700, Washington, DC, 20547–0001.

Dated: December 20, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–28394 Filed 12–27–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4942]

Culturally Significant Objects Imported for Exhibition Determinations: ''Renaissance and Baroque Bronzes From the Collection of the Fitzwilliam Museum, University of Cambridge''

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, 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 ''Renaissance and Baroque Bronzes From the Collection of the Fitzwilliam Museum, University of Cambridge'' 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 owner. I also determine that the exhibition or display of the exhibit objects at the The Frick Collection, New York, New York, from on or about February 15, 2005 to on or about April 24, 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 Wolodymyr R. Sulzynsky, the Office of the Legal Adviser, Department of State, (telephone: 202/453–8050). The address is: Department of State, SA–44, and 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 20, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–28393 Filed 12–27–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4928]

Meeting of the Advisory Committee on Cultural Diplomacy

SUMMARY: The Department of State Advisory Committee on Cultural Diplomacy will meet January 10, 2005 at 11 a.m. in Room 840, Department of State, Bureau of Educational and Cultural Affairs, 301 4th Street, SW., Washington, DC.

Members of the press and general public may attend, although attendance will be limited by seating availability. Access to Department of State buildings is strictly controlled, and individual building passes are required for all attendees. To confirm attendance at the meeting, please call (202) 203–7488. Members of the public who have confirmed their attendance must present a photo ID at the time they enter the Department of State and will be escorted to the meeting room.

The Advisory Committee on Cultural Diplomacy is responsible for advising the Secretary of State on programs and policies to advance the use of cultural diplomacy in United States foreign policy. This charge includes providing to the Secretary guidance on increasing the presentation abroad of the finest of U.S. creative, visual, and performing arts, as well as strategies for increasing public-private partnerships to sponsor cultural exchange programs that promote the national interests of the United States. An agenda for the Committee session will be distributed at the meeting.

Dated: December 20, 2004.

Daniel Schuman,

Chief, Cultural Programs Division, Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 04–28392 Filed 12–27–04; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4926]

Notice of Meeting of the Cultural Property Advisory Committee

In accordance with the provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*) there will be a meeting of the Cultural Property Advisory Committee on Thursday, February 17, 2005, from approximately 9 a.m. to 5 p.m., and on Friday, February 18, 2005, from approximately 9 a.m. to 2 p.m., at the Department of State, Annex 44, Room 840, 301 4th St., SW., Washington, DC. During its meeting the Committee will review a request from the Government of the People's Republic of China to the Government of the United States of America. Concerned that its cultural heritage is in jeopardy from pillage, the government of the People's Republic of China made this request under Article 9 of the 1970 UNESCO Convention. The request seeks U.S. import restrictions on Chinese archaeological material from the Paleolithic to the Qing Dynasty. A public summary of this request can be found at *http://exchanges.state.gov.* A **Federal Register** notice of receipt of this request, published on September 3, 2004, can also be found at this Web site.

The Committee's responsibilities are carried out in accordance with provisions of the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*). The text of the Act, a public summary of this request, and related information may be found at *http://exchanges.state.gov/culprop.* Portions of the meeting on February 17 and 18 will be closed pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h). However, on February 17, the Committee will hold an open session, approximately 1 p.m. to 3:30 p.m., to receive oral public comment on the China request. Persons wishing to attend this open session should notify the Cultural Heritage Center of the Department of State at (202) 619–6612 by Friday, February 4, 2005, 5 p.m. (e.s.t.) to arrange for admission, as seating is limited.

Those who wish to make oral presentations should request to be scheduled and submit a written text of the oral comments by Friday, February 4, to allow time for distribution of these comments to Committee members for their review prior to the meeting. Oral comments will be limited to five minutes each to allow time for questions from members of the Committee and must specifically address the determinations under Section 303(a)(1) of the Convention on Cultural Property Implementation Act, 19 U.S.C. 2602, pursuant to which the Committee must make findings. This citation for the determinations can be found at the Web site noted above.

The Committee also invites written comments and asks that they be submitted no later than February 4, 2005. All written materials, including the written texts of oral statements, should be faxed to (202) 260–4893, if 5 pages or less. Written comments greater than five pages must be mailed (20 copies) to Cultural Heritage Center, Department of State Annex 44, 301 4th St., SW., Rm. 334, Washington, DC

20547. Express mail is recommended for timely delivery.

Dated: December 16, 2004.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–28391 Filed 12–27–04; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending December 10, 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–2004–19872.
Date Filed: December 8, 2004.
Parties: Members of the International Air Transport Association.
Subject: PTC23 EUR–SEA 0193 dated 10 December 2004, TC23/TC123 Europe-South East Asia Expedited Resolutions 002ae, 015v r1–r5. Intended effective date: 1 February 2005.

Docket Number: OST–2004–19888.
Date Filed: December 10, 2004.
Parties: Members of the International Air Transport Association.
Subject:
PTC3 0789 dated 7 December 2004
TC3 Areawide Expedited Resolution 015v r1–r6
PTC3 0790 dated 7 December 2004
TC3 Within South Asian Subcontinent Expedited Resolution 002L r7–r13
PTC3 0791 dated 7 December 2004
TC3 Within South East Asia except between Malaysia and Guam Expedited Resolutions 002k, 070uu r14–r15
PTC3 0792 dated 7 December 2004
TC3 South East Asia-South Asian Subcontinent Expedited Resolution 002ww r16–r22
PTC3 0793 dated 7 December 2004
TC3 South Asian Subcontinent-South West Pacific Expedited Resolution 002pp r23–r28
PTC3 0794 dated 7 December 2004
TC3 Japan-Korea Expedited Resolution 002u r29–r31
PTC3–0795 dated 7 December 2004
TC3 Japan, Korea-South Asian Subcontinent Expedited Resolution 002g r32–r40
PTC3 0796 dated 7 December 2004
TC3 Japan, Korea-South East Asia except between Korea (Rep. of) and Guam, Northern Mariana Islands Expedited Resolution 002cc r41–r44
PTC3 0797 dated 7 December 2004
TC3 Japan, Korea-South West Pacific except between Korea (Rep. of) and American Samoa Expedited Resolution 002q r45–r51

Intended effective date: 15 January 2005.

Renee V. Wright,

Supervisory Dockets Officer, Alternate Federal Register Liaison.

[FR Doc. 04–28406 Filed 12–27–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending December 10, 2004

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2004–19848.
Date Filed: December 6, 2004.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 27, 2004.
Description: Application of Starair (Ireland) Limited requesting a Foreign Air Carrier Permit to engage in foreign charter air transportation of persons, property and mail between a point or points in Ireland and a point or points in the United States, including service via intermediate stops, and to engage in other Fifth Freedom charter operations in foreign air transportation.

Docket Number: OST–2004–19849.
Date Filed: December 6, 2004.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 27, 2004.
Description: Application of Starair (Ireland) Ltd., requesting an exemption to permit it to operate foreign charter combination air transportation between a point or points in Ireland and a point or points in the United States, including service via intermediate stops, and to conduct Fifth Freedom combination charter operations in foreign air transportation.

Docket Number: OST–2004–19850.
Date Filed: December 6, 2004.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 27, 2004.
Description: Application of Air Comet S.A. d/b/a Air Plus Comet, requesting a five year permit to engage in charter foreign air transportation of persons, property, and mail between points in the Kingdom of Spain and the United States.

Docket Number: OST–2004–19877.
Date Filed: December 8, 2004.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 29, 2004.
Description: Application of GoJet Airlines LLC requesting a certificate of public convenience and necessity to engage in interstate and foreign scheduled air transportation of persons, property and mail.

Renee V. Wright,

Supervisory Dockets Officer, Alternate Federal Register Liaison.

[FR Doc. 04–28402 Filed 12–27–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2004–19882]

Section 222 of the Motor Carrier Safety Improvement Act of 1999; Clarification of Agency Policy Statement

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of clarification; agency policy statement.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) clarifies its September 8, 2000 policy statement implementing section 222 of the Motor Carrier Safety Improvement Act of 1999. Section 222 requires the agency to assess maximum statutory penalties if a person is found to have committed a pattern of violations of critical or acute regulations, or previously committed the same or a related violation of critical or acute regulations. This notice clarifies the agency use of previous violations to assess maximum penalties under section 222. It also discusses the notification procedures and extraordinary circumstances that may warrant assessment of less than the maximum penalty.

DATES: December 28, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Pat Woodman, Chief of the Enforcement and Compliance Division (MC–ECE), (202) 366–9699, FMCSA, 400 Seventh Street, SW., Washington, DC 20590. You may also e-mail *marypat.woodman@fmcsa.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Statutory Authority

Section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA), (Public Law 106–159, 113 Stat. 1748, 1769, Dec. 9, 1999; codified in 49 U.S.C. 521 note) directed the Secretary of Transportation to:

(a) Ensure that motor carriers operate safely by imposing civil penalties at a level calculated to ensure prompt and sustained compliance with Federal motor carrier safety and commercial driver's license laws.

(b) Establish and assess minimum civil penalties for each violation of laws referred to under (a) above; and, assess the maximum civil penalty for each violation by any person who is found to have committed a pattern of violations of critical or acute regulations or to have previously committed the same or a related violation of critical or acute regulations.

(c) If the Secretary determines and documents that extraordinary circumstances exist which merit the assessment of any civil penalty lower than any level established above, the Secretary may assess such lower penalty. Further, in cases where a person has been found to have previously committed the same or a related violation of critical or acute regulations, extraordinary circumstances may be found to exist when the Secretary determines that repetition of such violation does not demonstrate a failure to take appropriate remedial action.

September 8, 2000, Policy Statement

On September 8, 2000, FMCSA sent a policy memorandum changing its fine assessment policy to meet the requirements of section 222 to its Field Administrators, Enforcement Team leaders, and State Directors. The memorandum defined a *pattern of violations* or *previously committed violations* as three cases within the last six years. The policy memorandum, in pertinent part, states:

(Page 1, third paragraph, beginning with the second sentence)

The three cases will consist of two cases which have been closed followed by discovery of new violations, all of which involve the same Part (*e.g.* Part 395). The six year period is measured from the end of the first to the end of the third compliance review (CR). If a case is appealed, the time needed to process the appeal *should not* be included as part of the six year period. If the third CR (and subsequent CRs) reveals violations of the same Part cited in two previous CRs within the last six years, a ''pattern of violations'' or ''previously committed violations'' is established and the claim letter should assess the maximum penalty for that count(s).

An electronic copy of the policy memorandum is available through DOT's Docket Management System (DMS) Web site at *http://dms.dot.gov,* by using the docket number of this notice, FMCSA–2004–19882. The DMS facility is located on the Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

General Discussion of Questions

We received several questions on the interpretation and implementation of FMCSA's policy memorandum. The agency addresses these questions and clarifies its implementation policy.

1. Will the Agency use Enforcement Cases Closed Before Issuance of the Policy Memorandum To Support Assessment of the Maximum Penalty?

MCSIA was signed into law on December 9, 1999, and FMCSA was created effective January 1, 2000. However, FMCSA did not provide guidance regarding implementation of section 222 until its September 8, 2000, policy memorandum was issued. We believe fairness to the motor carrier industry will be best served by using enforcement cases closed after September 8, 2000, as prior violations to support assessing maximum penalties under section 222 of MCSIA. Therefore, the agency will not use enforcement cases closed before September 8, 2000.

2. What Type of Agency Action Constitutes a Finding That a Violation was Committed for Purposes of Assessing the Maximum Penalty Under Section 222?

The policy memorandum provided that section 222 of MCSIA applies when there are two closed cases followed by discovery of new violations of the same Code of Federal Regulations (CFR) Part within a 6-year period, measured from the end of the first Compliance Review (CR) to the end of the third CR. It stated that the previous cases had to be closed but did not indicate whether an agency adjudication of the violations is required before a closed enforcement case is used as the basis for assessing the maximum civil penalty. We interpret section 222 as requiring that a previous enforcement case include either: (1) An explicit adjudicatory finding of a violation by the agency (Assistant Administrator or a DOT Administrative Law Judge); (2) an express admission of liability by the respondent in its reply to the Notice of Claim (NOC) and in a settlement agreement; or (3) a Final Agency Order issued under 49 CFR 386.14(e), based on respondent's failure to reply to the NOC.[1]

A settlement agreement lacking in language admitting liability will not be considered a prior violation for purposes of section 222. Therefore, in response to a NOC advising respondent that payment will constitute an admission of the violations set forth in the NOC, payment of a civil penalty will constitute an express admission of liability. In response to a NOC that lacks such an advisory, payment of a civil penalty will not be construed as a prior violation for purposes of section 222, unless accompanied by a written admission of violations alleged in the NOC.

3. How is the 6 Year Period Calculated for Determining When the Maximum Penalty Will Be Assessed?

The 6 year period is determined by starting with the closing date of the CR or roadside inspection in the third enforcement case and determining whether there are two prior closed enforcement cases against the respondent involving violations of the same CFR Part during the immediately preceding 6 years. Because we are requiring an adjudication or admission of liability before using a previous enforcement case as a finding of a committed violation, a case will be considered closed as of the date of the Final Agency Order.[2] In the event the case is resolved without a Final Agency Order, the relevant date will be the date of the response to the NOC enclosing payment of the civil penalty or the date the settlement is executed by both parties, whichever is later.[3]

[1] A Notice of Claim (NOC) becomes a Final Agency Order if the respondent fails to reply to the NOC within the time prescribed by 49 CFR 386.14. Under these circumstances, the NOC becomes the Final Agency Order 25 days after it is served.

[2] The case is considered closed following issuance of the Final Agency Order and the exhaustion of any post order notions such as a Petition for Reconsideration. However, if a Petition for Reconsideration of the Final Agency Order in a previous case is pending before the agency, the case should not be considered closed.

[3] If a settlement agreement concludes a case pending before an Administrative Law Judge or the Assistant Administrator, the closing date would be

Continued

4. What Extraordinary Circumstances Warrant Assessment of Less Than the Maximum Penalty?

Requests to reduce the penalty based on extraordinary circumstances will be considered on a case-by-case basis. Section 222 of MCSIA does not define the term ''extraordinary circumstances,'' but expressly provides that extraordinary circumstances meriting a reduction in the maximum penalty may be found to exist if we determine and document that repetition of the violation does not demonstrate a failure to take appropriate remedial action. Although the statute does not limit application of the extraordinary circumstances factor, we do not believe it is appropriate to attempt to define all possible potential extraordinary circumstances, except as indicated in the next section. The respondent carries the burden to demonstrate that extraordinary circumstances merit a reduction in the maximum penalty in response to the NOC and during the adjudication of the case.

5. What Type of Notice Will Be Required Before Assessing the Maximum Penalty?

Although section 222 of MCSIA does not specifically require prior notice to offenders that future violations may result in the imposition of maximum penalties, the September 8, 2000, policy statement provided that offenders should be given such notice as part of the close-out of the second CR. This guidance is now modified and the agency may assess maximum penalties in all appropriate cases. To address this issue, we (1) modified our standard NOC to advise respondents of the requirements of section 222 of MCSIA, and (2) published this amended policy statement in the **Federal Register** and posted it on FMCSA's Web site at *http://www.fmcsa.dot.gov.* No additional notice requirements are necessary.

6. Do FMCSA Service Centers Have Authority To Settle Cases Subject to Section 222 for Less Than the Maximum Penalty?

Section 222(a) of MCSIA provides that the Secretary ''should ensure that motor carriers operate safely by *imposing* civil penalties at a level calculated to ensure prompt and sustained compliance with Federal motor carrier safety and commercial driver's license laws'' (emphasis added). Section 222(b)(2) requires the Secretary to *assess* the maximum penalty in appropriate circumstances. A question was raised on whether Service Centers may settle cases subject to section 222 for less than the maximum penalty, provided the maximum penalty is assessed in the NOC.

Civil Penalties are ''assessed'' in the NOC and are ''imposed'' in an agency Order or settlement agreement. Since the literal language of the statute requires that maximum penalties be assessed (but not necessarily imposed) in section 222 cases, this would arguably permit settlement of cases below the maximum penalty, provided the negotiated penalty (the penalty actually imposed) is calculated to ensure prompt and sustained compliance with the Federal Motor Carrier Safety Regulations. To ensure uniformity in implementing section 222, FMCSA Service Centers will not, at this time, be permitted to settle section 222 cases for less than the maximum penalty assessed. However, settlement agreements establishing terms of payment will be permitted. As the agency gains more experience in applying section 222, this settlement limitation will be evaluated.

Issued on: December 16, 2004.

Annette M. Sandberg,

Administrator.

[FR Doc. 04–28343 Filed 12–27–04; 8:45 am]

BILLING CODE 4910–EX–P

the date the settlement agreement is accepted by the decisionmaker.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34617]

Patrick D. Broe and OmniTRAX, Inc.—Continuance in Control Exemption—Kettle Falls International Railway, LLC

Patrick D. Broe (Mr. Broe) and OmniTRAX, Inc. (OmniTRAX) (collectively, applicants) have filed a verified notice of exemption to continue in control of Kettle Falls International Railway, LLC (KFR), upon KFR's becoming a Class III rail carrier.

The transaction was scheduled to be consummated on or shortly after December 10, 2004.

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 34616, *Kettle Falls International Railway, LLC—Acquisition Exemption—The Burlington Northern and Santa Fe Railway Company*, wherein KFR seeks to acquire by purchase and lease from The Burlington Northern and Santa Fe Railway Company (BNSF) rail lines in the State of Washington. The rail lines being purchased are between: (1) milepost 4.7, near West Kettle Falls, WA, and milepost 34.375, at the United States-Canadian border; and (2) milepost 48.79, at the United States-Canadian border, and milepost 77.14, at San Poil, WA.[1] The rail lines being leased are between: (1) milepost 0.0, near Kettle Falls, WA, and milepost 4.7, near West Kettle Falls; and (2) milepost 61.0 near Chewelah, WA, and milepost 139.71, at the United States-Canadian border.[2] In addition, KFR will acquire incidental overhead trackage rights over the rail line between milepost 0.0 near Kettle Falls, and milepost 4.7, near West Kettle Falls. While KFR is leasing that 4.7-mile line, KFR is acquiring the incidental trackage rights to ensure continued access to BNSF for interchange at Kettle Falls from the rail line KFR is purchasing, in the event the lease of the line between Kettle Falls and West Kettle Falls expires or is terminated.

Mr. Broe is a noncarrier individual who directly controls OmniTRAX, a noncarrier company. OmniTRAX currently controls ten Class III rail carriers: Chicago Rail Link, LLC (CRL); Georgia Woodlands Railroad, LLC (GWRC); Great Western Railway of Colorado, LLC (GWR); Great Western Railway of Iowa LLC (CBGR); Manufacturers' Junction Railway, LLC (MJ); Newburgh & South Shore Railroad Limited (NSR); Northern Ohio & Western Railway, LLC (NOW); Panhandle Northern Railroad, LLC (PNR); Alliance Terminal Railroad, LLC (ATR); and Fulton County Railway, LLC (FCR).[3]

Mr. Broe and OmniTRAX also recently filed a notice of exemption to continue in control of Alabama & Tennessee River Railway, LLC (ATN), a noncarrier, upon ATN's becoming a

[1] The rail line that KFR is purchasing is located between milepost 4.7, near West Kettle Falls, and milepost 77.14, at San Poil. While the termini of this line are located in the State of Washington, the segment of the line between milepost 34.375 and milepost 48.79 is located in British Columbia, Canada. Consequently, the Board has jurisdiction only over the acquisition of the two segments in the United States described above.

[2] The rail segment that KFR is leasing is located between milepost 61.0, near Chewelah, and milepost 144.0, near Columbia Gardens, British Columbia, Canada. The segment of the Chewelah-Columbia Gardens line between mileposts 139.71 and 144.0 is located in British Columbia. Consequently, the Board has jurisdiction only over the lease of the line segment in the United States described here. BNSF is retaining restricted trackage rights over the segment of the line KFR is leasing between milepost 61.0, near Chewelah, and milepost 96.0, near Kettle Falls.

[3] CRL's lines are located in Illinois; GWRC's line is located in Georgia; GWR's lines are located in Colorado; CBGR's lines are located in Iowa; MJ's lines are located in Illinois; NSR's lines are located in Ohio; NOW's line is located in Ohio; PNR's line is located in Texas; ATR's lines are located in Texas; and FCR's lines are located in Georgia.

Class III railroad. *See Patrick D. Broe and OmniTRAX, Inc.—Continuance in Control Exemption—Alabama & Tennessee River Railway, LLC,* STB Finance Docket No. 34615 (STB served Dec. 17, 2004). In a transaction scheduled to occur on or after December 31, 2004, ATN will lease and operate certain rail lines in Alabama.[4]

Applicants state that: (1) the rail lines operated by CRL, GWRC, GWR, CBGR, MJ, NSR, NOW, PNR, ATR, and FCR do not connect with the rail lines being purchased or leased by KFR; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail lines being acquired by KFR with any railroad in the OmniTRAX corporate family; and (3) neither KFR nor any of the carriers controlled by OmniTRAX are Class I rail carriers. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2). The purpose of the transaction is to reduce overhead expenses, coordinate billing, maintenance, mechanical and personnel policies and practices of its rail carrier subsidiaries and thereby improve the overall efficiency of rail service provided by the 11 railroads.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34617, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 20, 2004.

[4] The rail lines being leased by ATN will not connect with the rail lines being acquired by KFR.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–28333 Filed 12–27–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34616]

Kettle Falls International Railway, LLC—Acquisition Exemption—The Burlington Northern and Santa Fe Railway Company

Kettle Falls International Railway, LLC (KFR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by purchase and lease from The Burlington Northern and Santa Fe Railway Company (BNSF) rail lines in the State of Washington. The rail lines being purchased are between: (1) milepost 4.7, near West Kettle Falls, WA, and milepost 34.375, at the United States-Canadian border; and (2) milepost 48.79, at the United States-Canadian border, and milepost 77.14, at San Poil, WA.[1] The rail lines being leased are between: (1) milepost 0.0, near Kettle Falls, and milepost 4.7, near West Kettle Falls; and (2) milepost 61.0 near Chewelah, WA, and milepost 139.71, at the United States-Canadian border.[2] In addition, KFR will acquire incidental overhead trackage rights over the rail line between milepost 0.0 near Kettle Falls, and milepost 4.7, near West Kettle Falls. While KFR is leasing that 4.7-mile line, KFR is acquiring the incidental trackage rights to ensure continued access to BNSF for interchange at Kettle Falls from the rail line KFR is purchasing in the event the lease of the line between Kettle Falls and West Kettle Falls expires or is terminated.

[1] The rail line that KFR is purchasing is located between milepost 4.7, near West Kettle Falls, and milepost 77.14, at San Poil. While the termini of this line are located in the State of Washington, the segment of the line between milepost 34.375 and milepost 48.79 is located in British Columbia, Canada. Consequently, the Board has jurisdiction only over the acquisition of the two segments in the United States described above.

[2] The rail segment that KFR is leasing is located between milepost 61.0, near Chewelah, and milepost 144.0, near Columbia Gardens, British Columbia, Canada. The segment of the Chewelah-Columbia Gardens line between milepost 139.71 and milepost 144.0 is located in British Columbia. Consequently, the Board has jurisdiction only over the lease of the line segment in the United States described here. BNSF is retaining restricted trackage rights over the segment of the line KFR is leasing between milepost 61.0, near Chewelah, and milepost 96.0, near Kettle Falls.

The transaction is related to STB Finance Docket No. 34617, *Patrick D. Broe and OmniTRAX, Inc.—Continuance in Control Exemption—Kettle Falls International Railway, LLC*, wherein Patrick D. Broe and OmniTRAX, Inc., have concurrently filed a verified notice of exemption to continue in control of KFR upon KFR's becoming a Class III rail carrier.

KFR certifies that its projected revenues as a result of this transaction will not result in KFR's becoming a Class II or Class I rail carrier, and further certifies that its projected annual revenues will not exceed $5 million.

The transaction was expected to be consummated on or shortly after December 10, 2004.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34616, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 20, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–28334 Filed 12–27–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: List of Data (A) and List of Data (B)

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial management Service, 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 a continuing information collection. By this notice, the Financial Management

Service solicits comments concerning the form ''List of Data (A) and List of Data (B).''

DATES: Written comments should be received on or before February 28, 2005.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Program Staff, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Rose Miller, Surety Bond Branch, 3700 East West Highway, Room 632F, Hyattsville, MD 20782, (202) 874–6850.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: List of Data (A) and List of Data (B).

OMB Number: 1510–0047.

Form Number: TFS 2211.

Abstract: This information is collected from insurance companies to assist Treasury Department in determining acceptability of the companies applying for a Certificate of Authority to write or reinsure Federal Study bonds.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 30.

Estimated Time Per Respondent: 18 hours.

Estimated Total Annual Burden Hours: 540.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget 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.

Wanda Rogers,

Assistant Commissioner, Financial Operations.

[FR Doc. 04–28346 Filed 12–27–04; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Schedule of Excess Risks

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the form ''Schedule of Excess Risks.''

DATES: Written comments should be received on or before February 28, 2005.

ADDRESSES: Direct all written comments to Financial Management Service, 3700 East West Highway, Records and Information Management Program Staff, Room 135, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Rose Miller, Surety Bond Branch, 3700 East West Highway, Room 632F, Hyattsville, MD 20782, (202) 874–6850.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below:

Title: Schedule of Excess Risks.

OMB Number: 1510–0004.

Form Number: FMS 285–A.

Abstract: This information is collected to assist the Treasury Department in determining whether a certified or applicant company is solvent and able to carry out its contracts, and whether the company is in compliance with Treasury excess risk regulations for writing Federal surety bonds.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,094.

Estimated Time Per Respondent: 20 hours.

Estimated Total Annual Burden Hours: 5,920.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget 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 that quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of informaion 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.

Wanda Rogers,

Assistant Commissioner, Financial Operations.

[FR Doc. 04–28348 Filed 12–27–04; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Application and Renewal Fees Imposed on Surety Companies and Reinsuring Companies; Increase in Fees Imposed

SUMMARY: Effective December 31, 2004, The Department of the Treasury, Financial Management Service, is increasing the fees it imposes on and collects from surety companies and reinsuring companies.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6765.

SUPPLEMENTARY INFORMATION: The fees imposed and collected, as referred to in 31 CFR 223.22, cover the costs incurred by the Government for services performed relative to qualifying corporate sureties to write Federal business. These fees are determined in accordance with the Office of Management and Budget Circular A–25, as amended. The change in fees is the result of a thorough analysis of costs associated with the Surety Bond Branch.

The new fee rate schedule is as follows:

(1) Examination of a company's application for a Certificate of Authority as an acceptable surety or as an acceptable reinsuring company on Federal bonds—$6,800.

(2) Determination of a company's continued qualification for annual renewal of its Certificate of Authority—$4,000.

(3) Examination of a company's application for recognition as an Admitted Reinsurer (except on excess risks running to the United States)—$2,400.

(4) Determination of a company's continued qualification for annual renewal of its authority as an Admitted Reinsurer—$1,700.

Questions concerning this notice should be directed to the Surety Bond Branch, Financial Accounting and Services Division, Financial Management Service, Department of the Treasury, Hyattsville, MD 20782, Telephone (202) 874–6850.

Dated: December 16, 2004.

Wanda J. Rogers,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 04–28347 Filed 12–27–04; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2005–04

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2005–04, Fuel Tax Guidance, Request for comments.

DATES: Written comments should be received on or before February 28, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the 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: Fuel Tax Guidance, Request for comments.

OMB Number: 1545–1915.

Notice Number: Notice 2005–04.

Abstract: Notice 2005–04 provides guidance on certain excise tax Code provisions that were added or effected by the American Jobs Creation Act of 2004. The information will be used by the IRS to verify that the proper amount of tax is reported, excluded, refunded, or credited.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, farms, Federal, state, local or tribal governments.

Estimated Number of Respondents: 20,263.

Estimated Time Per Respondent: 1 hour, 41 minutes.

Estimated Total Annual Burden Hours: 34,390.

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 20, 2004.

Carol Savage,

Management and Program Analyst.

[FR Doc. 04–28330 Filed 12–27–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Allowance for Private Purchase of an Outer Burial Receptacle in Lieu of a Government-Furnished Graveliner for a Grave in a VA National Cemetery

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Public Law 104–275 was enacted on October 9, 1996. It allowed the Department of Veterans Affairs (VA) to provide a monetary allowance towards the private purchase of an outer burial receptacle for use in a VA national cemetery. Under VA regulation (38 CFR 1.629), the allowance is equal to the average cost of Government-furnished graveliners minus any administrative costs to VA. The law continues to provide a veteran's survivors with the option of selecting a Government-furnished graveliner for use in a VA national cemetery where such use is authorized.

The purpose of this Notice is to notify interested parties of the average cost of Government-furnished graveliners, administrative costs that relate to processing a claim, and the amount of the allowance payable for qualifying interments that occur during calendar year 2005.

FOR FURTHER INFORMATION CONTACT: Lisa Ciolek, Capital and Performance Budgeting (41B1B), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Telephone: 202–273–5161 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 2306(e)(3) and Public Law 104–275, Section 213, VA may provide a monetary allowance for the private purchase of an outer burial receptacle for use in a VA national cemetery where its use is authorized. The allowance for qualified interments that occur during calendar year 2005 is the average cost of Government-furnished graveliners in

fiscal year 2004, less the administrative costs incurred by VA in processing and paying the allowance in lieu of the Government-furnished graveliner.

The average cost of Government-furnished graveliners is determined by taking VA's total cost during a fiscal year for single-depth graveliners that were procured for placement at the time of interment and dividing it by the total number of such graveliners procured by VA during that fiscal year. The calculation excludes both graveliners procured and pre-placed in gravesites as part of cemetery gravesite development projects and all double-depth graveliners. Using this method of computation, the average cost was determined to be $171.77 for fiscal year 2004.

The administrative costs incurred by VA consist of those costs that relate to processing and paying an allowance in lieu of the Government-furnished graveliner. These costs have been determined to be $9.75 for calendar year 2005.

The net allowance payable for qualifying interments occurring during calendar year 2005, therefore, is $162.02.

Approved: December 17, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 04–28362 Filed 12–27–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Office of Research and Development; Government Owned Invention Available for Licensing

AGENCY: Office of Research and Development, VA.

ACTION: Notice of Government-owned invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 and/or Cooperative Research and Development Agreements (CRADA) Collaboration under 15 U.S.C. 3710a to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Robert W. Potts, Department of Veterans Affairs, Director Technology Transfer Program, Office of Research and Development, 810 Vermont Avenue NW., Washington, DC 20420; fax: (202) 254–0260; e-mail: *bob.potts@hq.med.va.gov*. Any request for information should include the number and title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is:

International Patent Application No. PCT/US03/32602 ''Detection/Localization and Staging of Tumors Using Labeled Activated Lymphocytes Directed to a Tumor Specific Epitope.''

Dated: December 17, 2004.

Anthony J. Principi,

Secretary, Department of Veterans Affairs.

[FR Doc. 04–28363 Filed 12–27–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Office of Research and Development; Government Owned Invention Available for Licensing

AGENCY: Office of Research and Development, VA.

ACTION: Notice of Government-owned invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 and/or Cooperative Research and Development Agreements (CRADA) Collaboration under 15 U.S.C. 3710a to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Robert W. Potts, Department of Veterans Affairs, Director Technology Transfer Program, Office of Research and Development, 810 Vermont Avenue NW., Washington, DC 20420; fax: (202) 254–0260; e-mail: *bob.potts@hq.med.va.gov*. Any request for information should include the number and title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is:

International Patent Application No. PCT/US03/07934 ''Methods and Compositions Using Cellular Asialodeterminants and Glycoconjugates for Targeting Cells to Tissues and Organs.''

Dated: December 17, 2004.

Anthony J. Principi,

Secretary, Department of Veterans Affairs.

[FR Doc. 04–28364 Filed 12–27–04; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
December 28, 2004

Part II

Department of Defense

Department of the Army

32 CFR Part 518
The Freedom of Information Act Program; Proposed Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 518

RIN 0702–AA45

The Freedom of Information Act Program

AGENCY: Department of the Army, DoD.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of the Army is proposing to revise our rules in support of the Freedom of Information Act as required by public law and updates the provisions for access and release of information from all Army information systems (automated and manual) that further supports the Army's Records Management Program.

DATES: Comments submitted to the address below on or before February 28, 2005 will be considered.

ADDRESSES: You may submit comments, identified by ''32 CFR Part 518 and RIN 0702–AA45'' in the subject line, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- E-mail: *Brenda.Carter@rmda.belvoir.army.mil.* Include ''32 CFR Part 518 and RIN 0702–AA45'' in the subject line of the message.
- Mail: U.S. Army Records Management and Declassification Agency, Freedom of Information and Privacy Office, ATTN: AHRC–PDD–FP, (Ms. Carter), Casey Bldg., Suite 144, 7701 Telegraph Road, Alexandria, VA 22315–3905.

FOR FURTHER INFORMATION CONTACT: Brenda Carter (703) 428–6503.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed revision prescribes procedures and responsibilities of the Freedom of Information Act, in accordance with the Electronic Freedom of Information Act (FOIA) Amendments of 1996. The Electronic Freedom of Information Act Amendments of 1996 changed the response time from 10 to 20 days, required Multitrack processing of FOIA requests, required an Electronic FOIA Reading Room, and changed the requirements for the Annual Report and the timetable for that report from calendar to fiscal year.

B. Regulatory Flexibility Act

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the proposed rule does not have a significant economic impact on a substantial number of small entities within the meaning to the Regulatory Flexibility Act, 5 U.S.C. 601–612.

C. Paperwork Reduction Act

The Department of the Army has determined that the Paperwork Reduction Act does not apply because the proposed rule does not impose recordkeeping or information collection requirements from contractors or members of the public.

D. Executive Order 12866

The Department of the Army has determined that according to the criteria defined in Executive Order 12866, this proposed rule is not a significant regulatory action.

Bruno C. Leuyer,

Chief, Freedom of Information and Privacy Office.

List of Subjects in 32 CFR part 518

Freedom of Information Act, Administrative practices and procedures.

For the reasons stated in the preamble, the Department of the Army proposes to revise 32 CFR part 518—The Army Freedom of Information Act Program as follows:

PART 518—THE FREEDOM OF INFORMATION ACT PROGRAM

Subpart A—General provisions

Sec.
518.1 Purpose.
518.2 References.
518.3 Explanation of abbreviations and terms.
518.4 Responsibilities.
518.5 Authority.
518.6 Public information.
518.7 FOIA terms defined.
518.8 Freedom of Information requirements.

Subpart B—FOIA Reading Rooms

518.9 Reading room.
518.10 ''(a)(2)'' materials.
518.11 Other materials.

Subpart C—Exemptions

518.12 General.
518.13 FOIA exemptions.

Subpart D—For Official Use Only

518.14 General.

Subpart E—Release and Processing Procedures

518.15 General provisions.
518.16 Initial determinations.
518.17 Appeals.
518.18 Judicial actions.

Subpart F—Fee Schedule

518.19 General provisions.
518.20 Collection of fees and fee rates.
518.21 Collection of fees and fee rates for technical data.

Subpart G—Reports

518.22 Reports control.
518.23 Annual report content.

Appendices to Part 518

Appendix A to Part 518—References.
Appendix B to Part 518—Addressing FOIA Requests.

Authority: 5 U.S.C. 551, 552, 552a, 5101–5108, 5110–5113, 5115, 5332–5334, 5341–42, 5504–5509, 7154; 10 U.S.C. 130, 1102, 2320–2321, 2328; 18 U.S.C. 798, 3500; 31 U.S.C. 3710; 35 U.S.C. 181–188; 42 U.S.C. 2162; 44 U.S.C. 33; and Executive Order 12600.

PART 518—THE ARMY FREEDOM OF INFORMATION ACT PROGRAM

Subpart A—General provisions

§ 518.1 Purpose.

This part provides policies and procedures for implementation of the Freedom of Information Act (5 U.S.C. 552, as amended) and Department of Defense Directive (DoDD) 5400.7 and promotes uniformity in the Department of Defense (DoD) Freedom of Information Act (FOIA) Program (AR25–55). This Army regulation implements provisions for access and release of information from all Army information systems (automated and manual) in support of Army Information Management (AR 25–1).

§ 518.2 References.

Required and related publications are listed in Appendix A of this part.

§ 518.3 Explanation of abbreviations and terms.

Abbreviations and special terms used in this part are explained in the glossary of AR 25–55.

§ 518.4 Responsibilities.

(a) The Deputy Chief of Staff for Personnel (DCS, G–1) is responsible for issuing policy and establishing guidance for the Army FOIA Program. DCS, G–1 has the responsibility to approve exceptions to this part that are consistent with controlling law and regulations. DCS, G–1 may delegate the approval authority, in writing, to a division chief, under its supervision, within that agency in the grade of O6 or civilian equivalent.

(b) The U.S. Army Human Resources Command, (AHRC), The Adjutant General (TAG), Records Management and Declassification Agency (RMDA), is responsible for developing and recommending policy to DCS, G–1 concerning the Army FOIA program and overall execution of the program under the policy and guidance of DCS, G–1.

(c) The Chief of Information Officer (CIO), G6 will provide oversight of the FOIA program as necessary in compliance with Federal Statutes, regulations, Office of Management and Budget (OMB), and the Office of Secretary of Defense (OSD).

(d) Heads of Army Staff agencies, field operating agencies, major Army commands (MACOMS), and subordinate commands are responsible for the supervision and execution of the FOIA program in functional areas and activities under their command.

(e) Heads of Joint Service agencies or commands for which the Army is the Executive Agent, or otherwise has responsibility for providing fiscal, logistical, or administrative support, will adhere to the policies and procedures in this part.

(f) Commander, Army and Air Force Exchange Service (AAFES), is responsible for the supervision of the FOIA program within that command pursuant to this part.

§ 518.5 Authority.

(a) This part governs written FOIA requests from members of the public. It does not preclude the release of personnel or other records to agencies or individuals in the Federal Government for use in official work.

(b) Soldiers and civilian employees of the Department of the Army (DA) may, as private citizens, request DA or other agencies' records under the FOIA. They must prepare requests at their own expense and on their own time. They may not use Government equipment, supplies, or postage to prepare personal FOIA requests. It is not necessary for soldiers or civilian employees to go through the chain of command to request information under the FOIA.

(c) Requests for DA records processed under the FOIA may be denied only in accordance with the FOIA (5 U.S.C. 552(b)), as implemented by this part. Guidance on the applicability of the FOIA is also found in the Federal Acquisition Regulation (FAR).

(d) Release of some records may also be affected by the programs that created them. They are discussed in the following regulations:

(1) AR 20–1 (Inspector General activities and procedures);

(2) AR 27–10 (military justice);

(3) AR 27–20 (claims);

(4) AR 27–40 (litigation: release of information and appearance of witnesses);

(5) AR 27–60 (intellectual property);

(6) AR 36–2 (Government Accounting Office audits);

(7) AR 40–66, AR 40–68, and AR 40–400 (medical records);

(8) AR 70–31 (technical reports);

(9) AR 20–1, AR 385–40 and DA Pam 385–40 (aircraft accident investigations);

(10) AR 195–2 (criminal investigation activities);

(11) AR 190–45 (Military Police records and reports);

(12) AR 360–1 (Army public affairs: public information, general policies on release of information to the public);

(13) AR 380–5 and DoD 5200.1–R (national security classified information);

(14) AR 380–5 paragraph 7–101e (policies and procedures for allowing persons outside the Executive Branch to do unofficial historical research in classified Army records);

(15) AR 380–10 (Technology Transfer for disclosure of information and contacts with foreign representatives;

(16) AR 381–45 (U.S. Army Intelligence and Security Command investigation files);

(17) AR 385–40 (safety reports and records);

(18) AR 600–8–104 (military personnel information management records);

(19) AR 600–85 (alcohol and drug abuse records);

(20) AR 608–19 (family advocacy records); and

(21) AR 690 (series civilian personnel records, FAR, DoD Federal Acquisition Regulation Supplement (DFARS) and the Army Federal Acquisition Regulation Supplement (AFARS) procurement matters).

§ 518.6 Public information.

(a) *Public information.* The public has a right to information concerning the activities of its Government. Army policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A record requested by a member of the public who follows rules established by proper authority in DA shall not be withheld in whole or in part unless the record is exempt from mandatory partial or total disclosure under the FOIA. As a matter of policy, Army activities shall make discretionary disclosures of exempt records or information only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information. Activities must be prepared to present a sound legal basis in support of their determinations. In order that the public may have timely information concerning Army activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information that would not be withheld under the FOIA should continue to be honored through appropriate means without requiring the requester to invoke the FOIA.

(b) *FOIA handbook.* The Department of the Army Freedom of Information Act/Privacy Act (DA FOIA/PA) Office shall prepare, in addition to FOIA regulations, a handbook for the use of the public in obtaining information from its organizations. This handbook will be a short, simple explanation of what the FOIA is designed to do, and how a member of the public can use it to access government records. The DA FOIA/PA Office handbook will explain the types of records that can be obtained through FOIA requests, why some records cannot, by law, be made available, and how the Army activity determines whether or not the record can be released. The handbook will also explain how to make a FOIA request, how long the requester can expect to wait for a reply, and appeal rights. The handbook will supplement other information locator systems, such as the Government Information Locator Service (GILS), and explain how a requester can obtain more information about those systems. The handbook will be available on paper and through electronic means and contain the following additional information, complete with electronic links to the below elements: The location of reading room and the types and categories of information available; the location of the World Wide Web page; a reference to the Army FOIA regulation and how to obtain a copy; a reference to the Army FOIA annual report and how to obtain a copy; and the location of the GILS page. The DA FOIA handbook, ''A Citizen's Guide to Request Army Records Under the Freedom of Information Act (FOIA),'' can be accessed on-line at *http://www.rmda.belvoir.army.mil/.* ''The Major Automated Information Systems Descriptions'' can be accessed at *www.defenselink.mil/pubs/foi.*

(c) *Control system.* A request for records that invokes the FOIA shall enter a formal control system designed

to ensure accountability and compliance with the FOIA. Any request for Army records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this part, unless otherwise required.

§ 518.7 FOIA terms defined.

(a) *FOIA request.* A written request for Army records that reasonably describes the record(s) sought, made by any person, including a member of the public (U.S. or foreign citizen/entity), an organization, or a business, but not including a Federal Agency or a fugitive from the law, that either explicitly or implicitly invokes the FOIA, DoDD 5400.7, DoD 5400.7–R, this part, or Army Activity supplementing regulations or instructions. All requesters should also indicate a willingness to pay fees associated with the processing of their request. Requesters may ask for a waiver of fees, but should also express a willingness to pay fees in the event of a waiver denial. Written requests may be received by postal service or other commercial delivery means, by facsimile, or electronically (such as e-mail). Requests received by facsimile or electronically must have a postal mailing address included since it may not be practical to provide a substantive response electronically. The request is considered properly received, or perfected, when the conditions in this paragraph have been met and the request arrives at the FOIA office of the Activity in possession of the records.

(b) *Agency record.* The products of data compilation, such as all books, papers, maps, photographs, and machine readable materials, inclusive of those in electronic form or format, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in DA possession and control at the time the FOIA request is made.

(1) The following are not included within the definition of the word ''record'': Objects or articles, such as structures, furniture, vehicles and equipment, whatever their historical value, or value as evidence; Anything that is not a tangible or documentary record, such as an individual's memory or oral communication; Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use. Personal papers fall into three categories: Those created before entering Government service; private materials brought into, created, or received in the office that were not created or received in the course of transacting Government business; and work-related personal papers that are not used in the transaction of Government business in accordance with Public Law 86–36, National Security Information Exemption.

(2) A record must exist and be in the possession and control of DA at the time of the request to be considered subject to this part and the FOIA. There is no obligation to create or compile a record to satisfy a FOIA request.

(3) Hard copy or electronic records that are subject to FOIA requests under 5 U.S.C. 552(a)(3), and that are available to the public through an established distribution system such as the Government Printing Office (GPO), **Federal Register**, National Technical Information Service (NTIS), or the Internet, normally need not be processed under the provisions of the FOIA. If a request is received for such information, Army Activities shall provide the requester with guidance, inclusive of any written notice to the public, on how to obtain the information. However, if the requester insists that the request be processed under the FOIA, then the request shall be processed under the FOIA. If there is any doubt as to whether the request must be processed, contact DA, FOIA/PA Office.

(c) *Army activity.* A specific area of organizational or functional responsibility within DA, authorized to receive and act independently on FOIA requests.

(d) *Initial denial authority (IDA).* An official who has been granted authority by the Secretary of the Army to deny records requested under the FOIA based on one or more of the nine categories of exemptions from mandatory disclosure. An IDA also: Denies a fee category claim by a requester; denies a request for expedited processing due to demonstrated compelling need; denies a request for a waiver or reduction of fees; reviews a fee estimate; and confirms that no records were located in response to a request.

(e) *Appellate authority.* The Secretary of the Army or designee having jurisdiction for this purpose over the record, or any of the other adverse determinations. The DA appellate authority is the Office of the Army General Counsel (OGC).

(f) *Administrative appeal.* A request by a member of the general public, made under the FOIA, asking the appellate authority of the Army to reverse a decision to: Withhold all or part of a requested record; deny a fee category claim by a requester; deny a request for expedited processing due to demonstrated compelling need; deny a request for waiver or reduction of fees; deny a request to review an initial fee estimate; and confirm that no records were located during the initial search. Requesters also may appeal the failure to receive a response determination within the statutory time limits, a fee estimate, and any determination that the requester believes is adverse in nature.

(g) *Public interest.* The interest in obtaining official information that sheds light on an activity's performance of its statutory duties because the information falls within the statutory purpose of the FOIA to inform citizens about what their Government is doing. That statutory purpose, however, is not fostered by disclosure of information about private citizens accumulated in various governmental files that reveals nothing about an agency's or official's own conduct.

(h) *Electronic record.* Records (including e-mail) that are created, stored, and retrievable by electronic means.

(i) *Federal agency.* As defined by 5 U.S.C. 552(f)(1), a Federal agency is any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

(j) *Law enforcement investigation.* An investigation conducted by a command or activity for law enforcement purposes relating to crime, waste, fraud or national security. Such investigations may include gathering evidence for criminal prosecutions and for civil or regulatory proceedings.

§ 518.8 Freedom of Information requirements.

(a) *Compliance with the FOIA.* Army personnel are expected to comply with the FOIA, this part, and Army FOIA policy in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the Army FOIA Program and to create conditions that will promote public trust.

(b) *Openness with the public.* The DA shall conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not specifically exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules

promulgated by competent authority, whether or not the Act is invoked.

(1) *Operations Security (OPSEC).* DA officials who release records under the FOIA must also consider OPSEC. The Army implementing directive is AR 530–1.

(2) *DA Form 4948–R.* This form lists references and information frequently used for FOIA requests related to OPSEC. Persons who routinely deal with the public (by telephone or letter) on such requests should keep the form on their desks as a guide.

(c) *Avoidance of procedural obstacles.* Army Activities shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DA records promptly. The Army shall provide assistance to requesters to help them understand and comply with procedures established by this part and any supplemental regulations published by the Army Activities. Coordination of referral of requests with DA FOIA/PA Office should be made telephonically in order to respond to the requester in a timelier manner. Requests will not be mailed to the DA FOIA/PA Office for disposition or coordination with other IDAs.

(d) *Prompt action on requests and final response determinations.* Generally, when a member of the public complies with the procedures established in this part or instructions for obtaining DA records, and after the request is received by the official designated to respond, Army Activities shall endeavor to provide a final response determination within the statutory 20 working days. If a significant number of requests, or the complexity of the requests prevent a final response determination within the statutory time period, Army Activities shall advise the requester of this fact, and explain how the request will be responded to within its multitrack processing system. A final response determination is notification to the requester that the records are released or partially released, or will be released on a certain date, or the records are withheld under an appropriate FOIA exemption, or the records cannot be provided for one or more of the other reasons. Interim responses acknowledging receipt of the request, negotiations with the requester concerning the scope of the request, the response timeframe, and fee agreements are encouraged; however, such actions do not constitute a final response determination pursuant to the FOIA. If a request fails to meet minimum requirements as set forth, Activities shall contact the requester and inform the requester what would be required to perfect or correct the request, or to limit the scope to allow for the most expeditious response. The statutory 20 working day time limit applies upon receipt of a perfected or correct FOIA request. Before mailing a final response determination and those records or portions thereof deemed releasable, records custodians will obtain a written legal opinion from their servicing judge advocate concerning the releasibility of the requested records. The legal opinion must cite specific exemptions, appropriate justification, and identify if the records were processed under the FOIA, PA (including the applicable systems notice), or both.

(1) *Multi-track processing.* When an Army Activity has a significant number of pending requests that prevents a response determination being made within 20 working days, the requests shall be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the requests, and whether the request qualifies for expedited processing. Army Activities may establish as many processing queues as they wish; however, as a minimum, three processing tracks shall be established, all based on a first-in, first-out concept, and rank ordered by the date of receipt of the request. One track shall be a processing queue for simple requests, one track for complex requests, and one track shall be a processing queue for expedited processing. Determinations as to whether a request is simple or complex shall be made by each Army Activity. Army Activities shall provide a requester whose request does not qualify for the fastest queue an opportunity to limit the scope of the request in order to qualify for the fastest queue. This multitrack processing system does not obviate an Activity's responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(2) *Expedited processing.* A separate queue shall be established for requests meeting the test for expedited processing. Expedited processing shall be granted to a requester after the requester requests such and demonstrates a compelling need for the information. Notice of the determination as to whether to grant expedited processing in response to a requester's compelling need shall be provided to the requester within 10 calendar days after receipt of the request in the Army Activity's office that will determine whether to grant expedited processing. Once the Army Activity has determined to grant expedited processing, the request shall be processed as soon as practicable. Actions by Army Activities to initially deny or affirm the initial denial on appeal of a request for expedited processing and a failure to respond in a timely manner shall be subject to judicial review. Initial determination of denials of expedited processing will be immediately forwarded to the IDA for action. If the IDA upholds the denial, the requester will be informed of his or her right to appeal.

(i) *Imminent threat.* Compelling need means that the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

(ii) *Alleged Federal Government activity.* Compelling need also means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. An individual primarily engaged in disseminating information means a person whose primary activity involves publishing or otherwise disseminating information to the public. Representatives of the news media would normally qualify as individuals primarily engaged in disseminating information. Other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public.

(iii) *General public interest.* Urgently needed means that the information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of general public interest. However, information of historical interest only or information sought for litigation or commercial activities would not qualify, nor would a news media publication or broadcast deadline unrelated to the news breaking nature of the information.

(iv) *Certified statement.* A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of his or her knowledge. This statement must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access.

(v) *Other reasons for expedited processing.* Another reason that merits expedited processing by Army FOIA offices is an imminent loss of substantial due process rights. A demonstration of imminent loss of substantial due process rights shall be made by a statement certified by the requester to be true and correct to the best of his or her knowledge. The

statement mentioned in paragraph (c)(2)(iv) of this section must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access. Once the decision has been made to expedite the request for this reason, the request may be processed in the expedited processing queue behind those requests qualifying for compelling need.

(vi) *Administrative appeals.* These same procedures also apply to requests for expedited processing of administrative appeals.

(e) *Use of exemptions.* It is Army policy to make records publicly available, unless the record qualifies for exemption under one or more of the nine exemptions. Discretionary releases of information protected under the FOIA should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information. When Army activities determine to withhold information using one of the nine exemptions, the Department of Justice (DOJ) will defend the position unless it is found to be lacking a Sound Legal Basis for denial.

(1) Parts of a requested record may be exempt from disclosure under the FOIA. The proper DA official may delete exempt information and release the remainder to the requester. The proper official also has the discretion under the FOIA to release exempt information when appropriate; he or she must exercise this discretion in a reasonable manner, within regulations consistent with current policy considerations. The excised copies shall clearly reflect the denied information by the use of brackets, indicating the removal of information. Bracketed areas must be sufficiently removed so as to reveal no information. The best means to ensure illegibility is to cut out the information from a copy of the document and reproduce the appropriate pages.

(2) If the document is declassified, all classification markings shall be lined through with a single black line, which will allow the markings to be read. The document shall then be stamped ''Unclassified.''

(f) *Public domain.* Nonexempt records released under the authority of this part are considered to be in the public domain. Such records may also be made available in the DA reading room in paper form, as well as electronically, to facilitate public access. Exempt records disclosed without authorization by the appropriate Army FOIA official do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks the records in a private or personal capacity.

(g) *Creating a record.* A record must exist and be in the possession and control of DA at the time of the search to be considered subject to this part and the FOIA. There is no obligation to create or compile a record to satisfy a FOIA request. An Army Activity, however, may compile a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee that would be charged for providing the existing record. Fee assessments shall be in accordance with Subpart F of this part.

(1) Concerning electronic data, the issue of whether records are actually created or merely extracted from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of a record, programming, or particular format are questionable, Army Activities should apply a standard of reasonableness.

(2) If the capability exists to respond to the request, and the effort would be a business as usual approach, then the request should be processed. However, the request need not be processed where the capability to respond does not exist without a significant expenditure of resources, thus not being a normal business as usual approach. As used in this sense, a significant expenditure of resources in both time and/or manpower that would cause a significant interference with the operation of the Army Activity's automated information system would not be a business as usual approach.

(h) *Description of requested record.* Identification of the record desired is the responsibility of the requester. The requester must provide a description of the desired record that enables the Government to locate the record with a reasonable amount of effort. In order to assist Army Activities in conducting more timely searches, requesters should endeavor to provide as much identifying information as possible. When an Army Activity receives a request that does not reasonably describe the requested record, it shall contact the requester and afford the requester the opportunity to perfect the request. Army Activities are not obligated to act on the request until the requester perfects the request. When practicable, Army Activities shall contact the requester to aid in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act. DA FOIA officials will reply to unclear requests by: Describing the defects in the requests; explaining the types of information described below, and ask the requester for such information; and explaining that no action will be taken on the request until the requester replies to the letter.

(1) The following guidelines are provided to deal with generalized requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories: Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date of record creation, and originator; Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(2) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit an organized, non random search based on the Army Activity's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit an inference of the Category I elements needed to conduct such a search.

(3) The following guidelines deal with requests for personal records. Ordinarily, when personal identifiers are provided only in connection with a request for records concerning the requester, only records in a PA system of records that can be retrieved by personal identifiers need be searched. However, if an Army Activity has reason to believe that records on the requester may exist in a record system other than a PA system, the Army Activity shall search that system under the provisions of the FOIA. In either case, Army Activities may request a reasonable description of the records desired before searching for such records under the provisions of the FOIA and the PA. If the record is required to be released under the FOIA, the Privacy Act does not bar its disclosure.

(4) The previous guidelines notwithstanding, the decision of the Army Activity concerning reasonableness of description must be based on knowledge of its files. If the description enables Army Activity personnel to locate the record with

reasonable effort, the description is adequate. The fact that a FOIA request is broad or burdensome in its magnitude does not, in and of itself, entitle an Army Activity to deny the request on the ground that it does not reasonably describe the records sought. The key factor is the ability of the Army Activity's staff to reasonably ascertain and locate which records are being requested.

(i) *Referrals.* The Army FOIA referral policy is based upon the concept of the originator of a record making a release determination on its information. If an Army Activity receives a request for records originated by another Army Activity, it will contact the Army Activity to determine if it also received the request, and if not, obtain concurrence from the other Army Activity to refer the request. An Army Activity shall refer a FOIA request for a classified record that it holds to another Army Activity, DoD Component, or agency outside the DoD, if the record originated in another Army Activity or DoD Component or outside agency, or if the classification is derivative. In this situation, provide the record and a release recommendation on the record with the referral action. In either situation, the requester shall be advised of the action taken, unless exempt information would be revealed. While referrals to originators of information result in obtaining the best possible decision on release of the information, the policy does not relieve Army Activities from the responsibility of making a release decision on a record should the requester object to referral of the request and the record. Should this situation occur, Army Activities shall still coordinate with the originator of the information prior to making a release determination. A request received by an Army Activity having no records responsive to a request shall be referred routinely to another Army Activity, if the other Army Activity has reason to believe it has the requested records. Prior to notifying a requester of a referral to another Army Activity, the Army Activity receiving the initial request shall consult with the other Army Activity to determine if that Army Activity's association with the material is exempt. If the association is exempt, the Army Activity receiving the initial request will protect the association and any exempt information without revealing the identity of the protected Army Activity. The protected Army Activity should be responsible for submitting the justifications required in any litigation. Any Army Activity receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester. Army Activities making referrals of requests for records shall include with the referral, a point of contact by name, a telephone number, and an e-mail address. If the office receiving the FOIA request does not know where the requested records are located, that activity will contact the DA, FOIA/PA Office, to determine the office where the request should be referred.

(1) An Army Activity shall refer for response directly to the requester a FOIA request for a record that it holds to another Army Activity or agency outside the Army, if the record originated in the other Army Activity or outside agency. Whenever a record or a portion of a record is referred to another Army Activity or to a Government Agency outside of the Army for a release determination and direct response, the requester shall be informed of the referral, unless it has been determined that notification would reveal exempt information. Referred records shall only be identified to the extent consistent with security requirements.

(2) An Army Activity may refer a request for a record that it originated to another Army Activity or agency when the other Army Activity or agency has a valid interest in the record, or the record was created for the use of the other Army Activity or agency. In such situations, provide the record and a release recommendation on the record with the referral action. Include a point of contact with the telephone number. An example of such a situation is a request for audit reports prepared by the U.S. Army Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor shall be at the discretion of the contracting officer. A FOIA request shall be referred to the appropriate Army Activity and the requester shall be notified of the referral, unless exempt information would be revealed. Another example is a record originated by an Army Activity or agency that involves foreign relations, and could affect an Army Activity or organization in a host foreign country. Such a request and any responsive records may be referred to the affected Army Activity or organization for consultation prior to a final release determination within DA.

(3) Within DA, an Army Activity shall ordinarily refer a FOIA request and a copy of the record it holds but that originated with another Army Activity or that contains substantial information obtained from another Army Activity, to that Activity for direct response, after direct coordination and obtaining concurrence from the Activity. The requester then shall be notified of such referral. Army Activities shall not, in any case, release or deny such records without prior consultation with the other Army Activity.

(4) Army Activities that receive referred requests shall answer them in accordance with the time limits established by the FOIA, this part, and their multitrack processing queues, based upon the date of initial receipt of the request at the referring Activity or agency.

(5) Agencies outside DA that are subject to the FOIA.

(i) An Army Activity may refer a FOIA request for any record that originated in an agency outside DA or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the Army Activity must respond to the request.

(ii) An Army Activity shall refer to the agency that provided the record any FOIA request for investigative, intelligence, or any other type of records that are on loan to DA for a specific purpose, if the records are restricted from further release and so marked. However, if for investigative or intelligence purposes, the outside agency desires anonymity, an Army Activity may only respond directly to the requester after coordination with the outside agency.

(6) Army Activities that receive requests for records of the National Security Council (NSC), the White House, or the White House Military Office (WHMO) shall process the requests. Army records in which the NSC or White House has a concurrent reviewing interest, and NSC, White House, or WHMO records discovered in Army Activity's files shall be forwarded through DA, FOIA/PA Office, to the Washington Headquarters Services, Office For Freedom of Information and Security Review (OFOISR). The OFOISR shall coordinate with the NSC, White House, or WHMO and return the records to the originating agency after coordination.

(7) To the extent referrals are consistent with the policies expressed by this section, referrals between offices of the same Army Activity are authorized.

(8) On occasion, the DA receives FOIA requests for General Accounting Office (GAO) records containing Army information. Even though the GAO is outside the Executive Branch, and not subject to the FOIA, all FOIA requests

for GAO documents containing Army information received either from the public or on referral from the GAO shall be processed under the provisions of the FOIA.

(j) *Authentication.* Records provided under this part shall be authenticated with an appropriate seal, whenever necessary, to fulfill an official Government or other legal function. This service, however, is in addition to that required under the FOIA and is not included in the FOIA fee schedule. Army Activities may charge for the service at a rate of $5.20 for each authentication.

(k) *Records management.* FOIA records shall be maintained and disposed of in accordance with the National Archives and Records Administration (NARA) General Records Schedule and DoD Component records schedules.

(l) *Record-keeping requirements in accordance with the Army Records Information Management System (ARIMS).* The records listed below are required by ARIMS in the conduct of the daily business of the Army to provide adequate and proper documentation to protect the rights and interests of individuals and the Federal Government. The full description of the records and their disposition is found at *https://www2.arims.army.mil.*

(1) FOIA requests, access, and denials;

(2) FOIA administrative files;

(3) FOIA appeals;

(4) FOIA controls;

(5) FOIA reports;

(6) Access to information files;

(7) Safeguarded nondefense information releases;

(8) Nonsafeguarded information releases;

(9) Unauthorized disclosure reports;

(10) Acknowledgement; and

(11) Initial Denial Authority designations/appointments.

(m) *Relationship between the FOIA and the Privacy Act (PA).* Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting records, nor are all of them aware of appeal procedures. In some instances, they may cite neither Act, but will imply one or both Acts. For these reasons, the below guidelines are provided to ensure that requesters receive the greatest amount of access rights under both Acts.

(1) If the record is required to be released under the FOIA, the PA does not bar its disclosure. Unlike the FOIA, the PA applies only to U.S. citizens and aliens lawfully admitted for permanent residence.

(2) Requesters who seek records about themselves contained in a PA system of records and who cite or imply only the PA, will have their requests processed under the provisions of both the PA and the FOIA. If the PA system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1) and if the records, or any portion thereof, are exempt under the FOIA, the requester shall be so advised with the appropriate PA and FOIA exemption. Appeals shall be processed under both Acts.

(3) Requesters who seek records about themselves that are not contained in a Privacy Act system of records and who cite or imply the PA will have their requests processed under the provisions of the FOIA, since the PA does not apply to these records. Appeals shall be processed under the FOIA.

(4) Requesters who seek records about themselves that are contained in a PA system of records and who cite or imply the FOIA or both Acts will have their requests processed under the provisions of both the PA and the FOIA. If the PA system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1) and if the records, or any portion thereof, are exempt under the FOIA, the requester shall be so advised with the appropriate PA and FOIA exemption. Appeals shall be processed under both Acts.

(5) Requesters who seek access to agency records that are not part of a PA system of records, and who cite or imply the PA and FOIA, will have their requests processed under the FOIA since the PA does not apply to these records. Appeals shall be processed under the FOIA. Requesters who seek access to agency records and who cite or imply the FOIA will have their requests and appeals processed under the FOIA.

(6) Requesters shall be advised in the final response letter, which Act(s) was (were) used, inclusive of appeal rights as outlined in paragraphs (m)(1) through (5) of this section.

(n) *Non-responsive information in responsive records.* Army Activities shall interpret FOIA requests liberally when determining which records are responsive to the requests, and may release non-responsive information. However, should Army Activities desire to withhold non-responsive information, the following steps shall be accomplished:

(1) Consult with the requester, and ask if the requester views the information as responsive, and if not, seek the requester's concurrence to delete the non-responsive information without a FOIA exemption. Reflect this concurrence in the response letter.

(2) If the responsive record is unclassified, and the requester does not agree to deletion of non-responsive information without a FOIA exemption, release all non-responsive and responsive information that is not exempt. For non-responsive information that is exempt, notify the requester that even if the information were determined responsive, it would likely be exempt under (state appropriate exemption(s)). Advise the requester of the right to request this information under a separate FOIA request. The separate request shall be placed in the same location within the processing queue as the original request.

(3) If the responsive record is classified, and the requester does not agree to deletion of non-responsive information without a FOIA exemption, release all unclassified responsive and non-responsive information that is not exempt. The classified, non-responsive information need not be reviewed for declassification at this point. Advise the requester that even if the classified information were determined responsive, it would likely be exempt under 5 U.S.C. 552(b)(1), and other exemptions if appropriate. Advise the requester of the right to request this information under a separate FOIA request. The separate request shall be placed in the same location within the processing queue as the original request.

(o) *Honoring form or format requests.* Army Activities shall provide the record in any form or format requested by the requester if the record is readily reproducible in that form or format. Army Activities shall make reasonable efforts to maintain their records in forms or formats that are reproducible. In responding to requests for records, Army Activities shall make reasonable efforts to search for records in electronic form or format, except when such efforts would significantly interfere with the operation of the Army Activities' automated information system. Such determinations shall be made on a case-by-case basis.

Subpart B—FOIA Reading Rooms

§ 518.9 Reading room.

(a) *Reading room location.* The DA shall provide an appropriate facility or facilities where the public may inspect and copy or have copied the records described in paragraphs (b)(1) through (4) of this section. In addition to the records described, DA may elect to place other records in their reading room, and also make them electronically available to the public. The Army may share reading room facilities with DoD Components if the public is not unduly inconvenienced, and also may establish decentralized reading rooms. When appropriate, the cost of copying may be

imposed on the person requesting the material in accordance with the provisions of Subpart F of this part. The Army FOIA Public Reading Room is operated by the DA, FOIA/PA Office.

(b) *Record availability.* The FOIA requires that records described in 5 U.S.C. 552(a)(2)(A), (B), (C), and (D) created on or after November 1, 1996, shall be made available electronically, as well as in hard copy in the FOIA reading room for inspection and copying, unless such records are published and copies are offered for sale. All portions determined to be exempt in accordance with 5 U.S.C. 552 (reference (a)) shall be deleted from all 5 U.S.C. 552(a)(2) records made available to the general public. In every case, justification for the deletion must be fully explained in writing, and the extent of such deletion shall be indicated on the record that is made publicly available, unless such indication would harm an interest protected by an exemption under which the deletion was made. If technically feasible, the extent of the deletion in electronic records or any other form of record shall be indicated at the place in the record where the deletion was made. However, the Army may publish in the **Federal Register** a description of the basis upon which it will delete identifying details of particular types of records to avoid clearly unwarranted invasions of privacy, or competitive harm to business submitters. In appropriate cases, the Army may refer to this description rather than write a separate justification for each deletion. 5 U.S.C. 552(a)(2)(A), (B), (C), and (D) records are:

(1) *(a)(2)(A) records.* Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551, that may be cited, used, or relied upon as precedents in future adjudications;

(2) *(a)(2)(B) records.* Statements of policy and interpretations that have been adopted by the agency that are not published in the **Federal Register**; and

(3) *(a)(2)(C) records.* Administrative staff manuals and instructions, or portions thereof that establish Army policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the Army. Examples of manuals and instructions not normally made available are:

(i) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases; and

(ii) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and intelligence activities.

(4) *(a)(2)(D) records.* Those 5 U.S.C. 552(a)(3) records, which because of the nature of the subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records. These records are referred to as FOIA-processed (a)(2) records.

(i) Army Activities shall decide on a case by case basis whether records fall into this category, based on previous experience of the Army Activity with similar records; particular circumstances of the records involved, including their nature and the type of information contained in them; or the identity and number of requesters and whether there is widespread press, historic, or commercial interest in the records.

(ii) This provision is intended for situations where public access in a timely manner is important, and it is not intended to apply where there may be a limited number of requests over a short period of time from a few requesters. Army Activities may remove the records from this access medium when the appropriate officials determine that access is no longer necessary.

(iii) Should a requester submit a FOIA request for FOIA-processed (a)(2) records, and insist that the request be processed, Army Activities shall process the FOIA request. However, Army Activities have no obligation to process a FOIA request for 5 U.S.C. 552(a)(2)(A), (B), and (C) records because these records are required to be made public and not FOIA-processed under paragraph (a)(3) of the FOIA.

§ 518.10 ''(a)(2)'' materials.

(a) The DA FOIA/PA Office shall maintain in the facility an index of materials described in paragraphs (b)(1) through (4) of § 518.9, that are issued, adopted, or promulgated after July 4, 1967. No ''(a)(2)'' materials issued, promulgated, or adopted after July 4, 1967 that are not indexed and either made available or published may be relied upon, used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Such materials issued, promulgated, or adopted before July 4, 1967 need not be indexed, but must be made available upon request if not exempted under this part.

(b) The DA FOIA/PA Office shall promptly publish quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of ''(a)(2)'' materials or supplements thereto unless it publishes in the **Federal Register** an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in Subpart F of this part.

(c) Each index of ''(a)(2)'' materials or supplement thereto shall be arranged topically or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for Army convenience.

(d) A general index of FOIA-processed (a)(2) records shall be made available to the public, both in hard copy and electronically.

§ 518.11 Other materials.

(a) Any available index of Army material published in the **Federal Register**, such as material required to be published by Section 552(a)(1) of the FOIA, shall be made available in the Army FOIA Public Reading Room, and electronically to the public.

(b) Although not required to be made available in response to FOIA requests or made available in FOIA Reading Rooms, ''(a)(1)'' materials shall, when feasible, be made available to the public in FOIA reading rooms for inspection and copying, and by electronic means. Examples of ''(a)(1)'' materials are descriptions of an agency's central and field organization, and to the extent they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

Subpart C—Exemptions

§ 518.12 General.

Records that meet the exemption criteria of the FOIA may be withheld from public disclosure and need not be published in the **Federal Register**, made available in a library reading room, or provided in response to a FOIA request.

§ 518.13 FOIA exemptions.

The following types of records may be withheld in whole or in part from public disclosure under the FOIA, unless otherwise prescribed by law. A discretionary release of a record to one requester shall prevent the withholding

of the same record under a FOIA exemption if the record is subsequently requested by someone else. However, a FOIA exemption may be invoked to withhold information that is similar or related to that which has been the subject of a discretionary release. In applying exemptions, the identity of the requester and the purpose for which the record is sought are irrelevant with the exception that an exemption may not be invoked where the particular interest to be protected is the requester's interest. However, if the subject of the record is the requester for the record and the record is contained in a PA system of records, it may only be denied to the requester if withholding is both authorized by AR 25–71 and by a FOIA exemption.

(a) *Number 1 (5 U.S.C. 552 (b)(1)).* Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by Executive Order and implemented by regulations, such as DoD 5200.1–R. Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in DoD 5200.1–R apply. If the information qualifies as exemption 1 information, there is no discretion regarding its release. In addition, this exemption shall be invoked when the following situations are apparent:

(1) The fact of the existence or nonexistence of a record would itself reveal classified information. In this situation, Army Activities shall neither confirm nor deny the existence or nonexistence of the record being requested. A ''refusal to confirm or deny'' response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a ''no record'' response when a record does not exist, and a ''refusal to confirm or deny'' when a record does exist will itself disclose national security information.

(2) Compilations of items of information that are individually unclassified may be classified if the compiled information reveals additional association or relationship that meets the standard for classification under an existing executive order for classification and DoD 5200.1–R, and is not otherwise revealed in the individual items of information.

(b) *5 U.S.C. 552(b)(2).* Those related solely to the internal personnel rules and practices of the DoD or any of its Components. This exemption has two profiles, high (b)(2) and low (b)(2). Activities are encouraged to consult the DA, FOIA/PA Office, and the U.S. DoJ ''Freedom of Information Act Guide & Privacy Act Overview'' for a more in depth discussion on the legal history of the use of the low (b)(2) exemption. When only a minimal Government interest would be affected (administrative burden), Army Activities shall apply the sound legal basis standard regarding disclosure of the information. Army Activities shall apply the low 2 exemption as applicable.

(1) Records qualifying under high (b)(2) are those containing or constituting statutes, rules, regulations, orders, manuals, directives, instructions, security classification guides, and sensitive but unclassified information related to America's homeland security and critical infrastructure information the release of which would allow circumvention of these records thereby substantially hindering the effective performance or present an unwarranted risk of adverse impact on the ability of other agencies to protect other important records of a significant function of the DA. Examples include:

(i) Those operating rules, guidelines, and manuals for Army investigators, inspectors, auditors, or examiners that must remain privileged in order for the Army Activity to fulfill a legal requirement;

(ii) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion; and

(iii) Computer software, the release of which would allow circumvention of a statute, DoD or Army rules, regulations, orders, manuals, directives, or instructions. In this situation, the use of the software must be closely examined to ensure a circumvention possibility exists.

(2) Records qualifying under the low (b)(2) profile are those that are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order to disclose the records. Examples include rules of personnel's use of parking facilities or regulation of lunch hours, statements of policy as to sick leave, and administrative data such as file numbers, mail routing stamps, initials, data processing notations, brief references to previous communications, and other like administrative markings. Army Activities shall apply the low 2 exemption as applicable.

(c) *Number 3 (5 U.S.C. 552(b)(3)).* Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. The DA, FOIA/PA Office, maintains a list of (b)(3) statutes used within the DoD, and provides updated lists of these statutes to Army Activities on a periodic basis. A few examples of such statutes are:

(1) Personnel in Overseas, Sensitive, or Routinely Deployable Units: nondisclosure of personally identifying information, 10 U.S.C. 130(b). Additionally, the names and duty addresses (postal and/or e-mail) of Army military and civilian personnel who are assigned to units that are sensitive, routinely deployable, or stationed in foreign territories can constitute a clearly unwarranted invasion of personal privacy and may also be withheld in accordance with FOIA Exemption 3. Names and duty addresses (postal and/or e-mail) published in telephone directories, organizational charts, rosters and similar materials for personnel assigned to units that are sensitive, routinely deployable, or stationed in foreign territories are withholdable under this exemption, in accordance with 10 U.S.C. 130 ''Personnel in Overseas, Sensitive, or Routinely Deployable Units;''

(2) Classification and Declassification of Restricted Data, 42 U.S.C. 2162;

(3) Disclosure of Classified Information, 18 U.S.C. 798(a);

(4) Authority to Withhold from Public Disclosure Certain Technical Data, 10 U.S.C. 130 and DoDD 5230.25;

(5) Confidentiality of Medical Quality Assurance Records: Qualified Immunity for Participants, 10 U.S.C. 1102(f);

(6) Physical Protection of Special Nuclear Material: Limitation on Dissemination of Unclassified Information, 10 U.S.C. 128;

(7) Protection of Intelligence Sources and Methods, 50 U.S.C. 403–3(c)(6);

(8) Prohibition on Release of Contractor Submitted Proposals, 10 U.S.C. 2305(g);

(9) Restrictions on Disclosing and Obtaining Contractor Bid or Proposal Information or Source Selection Information, 41 U.S.C. 423; and

(10) Secrecy of Certain Inventions and Filing Applications in a Foreign Country, 35 U.S.C. 181–188. Any records containing information relating to inventions that are the subject of

patent applications on which Patent Secrecy Orders have been issued.

(d) *Number 4 (5 U.S.C. 552 (b)(4)).* Those containing trade secrets or commercial or financial information that an Army Activity receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information, impair the Government's ability to obtain necessary information in the future, or impair some other legitimate Government interest. Commercial or financial information submitted on a voluntary basis, absent any exercised authority prescribing criteria for submission is protected without any requirement to show competitive harm. If the information qualifies as exemption 4 information, there is no discretion in its release. Examples include:

(1) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals set forth in or incorporated by reference in a contract entered into between the Army Activity and the offeror that submitted the proposal, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data. Additionally, when the provisions of 10 U.S.C. 2305(g) and 41 U.S.C. 423 are met, certain proprietary and source selection information may be withheld under exemption 3;

(2) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor;

(3) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged;

(4) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the DA;

(5) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress;

(6) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with Federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interests in such data in accordance with 10 U.S.C. 2320–2311 and DoD Federal Acquisition Regulation Supplement (DFARS), Subpart 27.4. Technical data developed exclusively with Federal funds may be withheld under Exemption Number 3 if it meets the criteria of 10 U.S.C. 130 and DoDD 5230.25;

(7) Computer software, which is copyrighted in accordance with 17 U.S.C. 106, 'Exclusive rights in Copyrighted Works, the disclosure of which would have an adverse impact on the potential market value of a copyrighted work; and

(8) Proprietary information submitted strictly on a voluntary basis, absent any exercised authority prescribing criteria for submission. Examples of exercised authorities prescribing criteria for submission are statutes, Executive Orders, regulations, invitations for bids, requests for proposals, and contracts. Submission of information under these authorities is not voluntary.

(e) *Number 5 (5 U.S.C. 552 (b)(5)).* Those containing information considered privileged in litigation, primarily under the deliberative process privilege. Except as provided in paragraphs (e) (1) through (5) of this section, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters that are reflected in deliberative records pertaining to the decision-making process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e)), or within or among Army Activities. In order to meet the test of this exemption, the record must be both deliberative in nature, as well as part of a decision-making process. Merely being an internal record is insufficient basis for withholding under this exemption. Also potentially exempted are records pertaining to the attorney-client privilege and the attorney work-product privilege. Discretionary disclosure decisions should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information.

(1) Examples of the deliberative process include:

(i)The non-factual portions of staff papers, to include after-action reports, lessons learned, and situation reports containing staff evaluations, advice, opinions, or suggestions;

(ii) Advice, suggestions, or evaluations prepared on behalf of the DA by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.;

(iii) Those non-factual portions of evaluations by DoD Component personnel of contractors and their products;

(iv) Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions;

(v) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interest;

(vi) Those portions of official reports of inspection, reports of the Inspector Generals, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more Army Activities, when these records have traditionally been treated by the courts as privileged against disclosure in litigation; and

(vii) Planning, programming, and budgetary information that is involved in the defense planning and resource allocation process.

(2) If any such intra-or inter-agency record or reasonably segregable portion of such record hypothetically would be made available routinely through the discovery process in the course of litigation with the Army, then it should not be withheld under the FOIA. If, however, the information hypothetically would not be released at all, or would only be released in a particular case during civil discovery where a party's particularized showing of need might override a privilege, then the record may be withheld. Discovery is the formal process by which litigants obtain information from each other for use in the litigation. Consult with legal counsel to determine whether exemption 5 material would be routinely made available through the discovery process.

(3) Intra- or inter-agency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through discovery, and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(4) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(5) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

(f) *Number 6 (5 U.S.C. 552 (b)(6)).* Information in personnel and medical files, as well as similar personal information in other files, and lists of personally identifying information of Army personnel, that, if disclosed to a requester, other than the person about whom the information is about, would result in a clearly unwarranted invasion of personal privacy. Release of information about an individual contained in a Privacy Act System of Records that would constitute a clearly unwarranted invasion of privacy is prohibited, and could subject the releaser to civil and criminal penalties. If the information qualifies as exemption 6 information, there is no discretion regarding its release.

(1) Examples of other files containing personal information similar to that contained in personnel and medical files include:

(i) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information; and

(ii) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(2) Army components shall ordinarily withhold lists of names (including active duty military, civilian employees, contractors, members of the National Guard and Reserves, and military dependents) and other personally identifying information, including lists of e-mail addresses of personnel currently or recently assigned within a particular component, unit, organization, or office within the Army. Home addresses, including private e-mail addresses, are normally not releasable without the consent of the individuals concerned. This includes lists of home addresses and military quarters' addressees without the occupant's name.

(i) *Privacy interest.* A privacy interest may exist in personal information even though the information has been disclosed at some place and time. If personal information is not freely available from sources other than the Federal Government, a privacy interest exists in its nondisclosure. The fact that the Federal Government expended funds to prepare, index and maintain records on personal information, and the fact that a requester invokes FOIA to obtain these records indicates the information is not freely available.

(ii) The right to privacy of deceased persons is not entirely settled, but the majority rule is that death extinguishes their privacy rights. However, particularly sensitive, graphic, personal details about the circumstances surrounding an individual's death may be withheld when necessary to protect the privacy interests of surviving family members. Even information that is not particularly sensitive in and of itself may be withheld to protect the privacy interests of surviving family members if disclosure would rekindle grief, anguish, pain, embarrassment, or cause a disruption of their peace of minds. Additionally, the deceased's social security number should be withheld since it is used by the next of kin to receive benefits. Disclosures of the deceased's social security number may be made to the immediate next of kin.

(iii) A clearly unwarranted invasion of the privacy of third parties identified in a personnel, medical or similar record constitutes a basis for deleting those reasonably segregable portions of that record. When withholding third party personal information from the subject of the record and the record is contained in a Privacy Act system of records, consult with legal counsel.

(iv) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, Army Activities shall neither confirm nor deny the existence or nonexistence of the record being requested. This is a ''Glomar'' response, and exemption 6 must be cited in the response. Additionally, in order to ensure personal privacy is not violated during referrals, Army Activities shall coordinate telephonically or in person with other Army Activities or DoD Components or Federal Agencies before referring a record that is exempt under the ''Glomar'' concept. *See Phillippi* v. *CIA*, 546 F.2d 1009 (D.C. Cir. 1976).

(v) A ''refusal to confirm or deny'' response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a ''no records'' response when a record does not exist and a ''refusal to confirm or deny'' when a record does exist will itself disclose personally private information. Refusal to confirm or deny should not be used when:

(A) The person whose personal privacy is in jeopardy has provided the requester a waiver of his or her privacy rights;

(B) The person initiated or directly participated in an investigation that lead to the creation of an agency record seeks access to that record; or

(C) The person whose personal privacy is in jeopardy is deceased, the Agency is aware of that fact, and disclosure would not invade the privacy of the deceased's family.

(g) *Number 7 (5 U.S.C. 552 (b)(7)).* Records or information compiled for law enforcement purposes, *i.e.*, civil, criminal, or military, including the implementation of Executive Orders or regulations issued pursuant to law. This exemption may be invoked to prevent disclosure of documents not originally created for, but later gathered for law enforcement purposes. With the exception of parts (C) and (F), this exemption is discretionary. If information qualifies as exemption (7)(C) or (7)(F) information, there is no discretion in its release.

(1) This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

(i) Could reasonably be expected to interfere with law enforcement proceedings (5 U.S.C. 552(b)(7)(A));

(ii) Would deprive a person of the right to a fair trial or to an impartial adjudication (5 U.S.C. 552(b)(7)(B));

(iii) Could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a living person,

or to surviving family members of an individual identified in such a record (5 U.S.C. 552(b)(7)(C));

(iv) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, Activities shall neither confirm nor deny the existence or nonexistence of the record being requested. This is a ''Glomar'' response, and exemption (7)(C) must be cited in the response. Additionally, in order to ensure personal privacy is not violated during referrals, Army Activities shall coordinate with other Army Activities or DoD Components or Federal Agencies before referring a record that is exempt under the ''Glomar'' concept;

(v) A ''refusal to confirm or deny'' response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a ''no records'' response when a record does not exist and a ''refusal to confirm or deny'' when a record does exist will itself disclose personally private information;

(vi) Refusal to confirm or deny should not be used when the person whose personal privacy is in jeopardy has provided the requester with a waiver of his or her privacy rights; or the person whose personal privacy is in jeopardy is deceased, and the Agency is aware of that fact and disclosure would not invade the privacy of the deceased's family;

(vii) Could reasonably be expected to disclose the identity of a confidential source, including a source within DoD, a State, local, or foreign agency or authority, or any private institution that furnishes the information on a confidential basis; and could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation (5 U.S.C. 552(b)(7)(D));

(viii) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law (5 U.S.C. 552(b)(7)(E)); or

(ix) Could reasonably be expected to endanger the life or physical safety of any individual (5 U.S.C. 552(b)(7)(F)).

(2) Some examples of exemption 7 are:

(i) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related Government litigation or adjudicative proceedings;

(ii) The identity of firms or individuals being investigated for alleged irregularities involving contracting with the DoD when no indictment has been obtained or any civil action filed against them by the United States; and

(iii) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within an Army Activity or a DoD Component, or a lawful national security intelligence investigation conducted by an authorized agency or office within an Army Activity or a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(3) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500), is not diminished.

(4) Excluded from exemption 7 are two situations applicable to DoD. (Activities considering invoking an exclusion based on the following scenarios should first consult through legal counsel, to the DoJ, Office of Information and Privacy (DoJ OIP).

(i) Whenever a request is made that involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves a possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, Activities may, during only such times as that circumstance continues, treat the records or information as not subject to the FOIA. In such a situation, the response to the requester will state that no records were found.

(ii) Whenever informant records maintained by a criminal law enforcement organization within an Army Activity or a DoD Component under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the Activity may treat the records as not subject to the FOIA, unless the informant's status as an informant has been officially confirmed. If it is determined that the records are not subject to 5 U.S.C. 552(b)(7), the response to the requester will state that no records were found.

(h) *Number 8 (5 U.S.C. 552(b)(8)).* Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(i) *Number 9 (5 U.S.C. 552(b)(9)).* Those containing geological and geophysical information and data (including maps) concerning wells.

Subpart D—For Official Use Only

§ 518.14 General.

Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public because disclosure would cause harm to an interest protected by one or more FOIA exemptions 2 through 9 (see Subpart C of this part) shall be considered as being for official use only (FOUO). No other material shall be considered FOUO and FOUO is not authorized as an additional form of classification to protect national security interests. Additional information on FOUO and other controlled, unclassified information may be found in DoD 5200.1–R, ''Information Security Program'' or by contacting the DA FOIA/PA Office.

Subpart E—Release and Processing Procedures

§ 518.15 General provisions.

(a) Since the policy of the DoD is to make the maximum amount of information available to the public consistent with its other responsibilities, written requests for an Army record made under the provisions of 5 U.S.C. 552(a)(3) of the FOIA may be denied only when:

(1) The record is subject to one or more of the exemptions of the FOIA;

(2) The record has not been described well enough to enable the Army Activity to locate it with a reasonable amount of effort by an employee familiar with the files; or

(3) The requester has failed to comply with the procedural requirements, including the written agreement to pay or payment of any required fee imposed by the instructions of the Army Activity concerned. When personally identifiable information in a record is requested by the subject of the record or his attorney, notarization of the request, or a statement certifying under the penalty of perjury that their identity is true and correct may be required.

Additionally, written consent of the subject of the record is required for disclosure from a PA system of records, to include the subject's attorney.

(4) Release of information under the FOIA can have an adverse impact on OPSEC. The Army implementing directive for OPSEC is AR 530–1. It requires that OPSEC points of contact be named for all HQDA staff agencies and for all commands down to battalion level. The FOIA official for the staff agency or command will use DA Form 4948–R to announce the OPSEC/FOIA advisor for the command. Persons named as OPSEC points of contact will be OPSEC/FOIA advisors. Command OPSEC/FOIA advisors should implement the policies and procedures in AR 530–1, consistent with this part and with the following considerations:

(i) Documents or parts of documents properly classified in the interest of national security must be protected. Classified documents may be released in response to a FOIA request only under AR 380–5, Chapter III. AR 380–5 provides that if parts of a document are not classified and can be segregated with reasonable ease, they may be released, but parts requiring continued protection must be clearly identified.

(ii) The release of unclassified documents could violate national security. When this appears possible, OPSEC/FOIA advisors should request a classification evaluation of the document by its proponent under AR 380–5, paragraphs 2–204, 2–600, 2–800, and 2–801. In such cases, other FOIA exemptions may also apply.

(iii) A combination of unclassified documents, or parts of them, could combine to supply information that might violate national security if released. When this appears possible, OPSEC/FOIA advisors should consider classifying the combined information per AR 380–5, paragraph 2–211.

(iv) A document or information may not be properly or currently classified when a FOIA request for it is received. In this case, the request may not be denied on the grounds that the document or information is classified except in accordance with Executive Order 12958 as amended, Section 1.6(d), and AR 380–5, paragraph 2–204, and with approval of the Army OGC.

(5) OPSEC/FOIA advisors will; advise persons processing FOIA requests on related OPSEC requirements; help custodians of requested documents prepare requests for classification evaluations; and help custodians of requested documents identify the parts of documents that must remain classified under this section and AR 380–5.

(6) OPSEC/FOIA advisors do not, by their actions, relieve FOIA personnel and custodians processing FOIA requests of their responsibility to protect classified or exempted information.

(b) The provisions of the FOIA are reserved for persons with private interests as opposed to U.S. Federal Agencies seeking official information. Requests from private persons will be made in writing, and should clearly show all other addressees within the Federal Government to which the request was also sent. This procedure will reduce processing time requirements, and ensure better inter- and intra-agency coordination. However, if the requester does not show all other addressees to which the request was also sent, Army Activities shall still process the request. Army Activities should encourage requesters to send requests by mail, facsimile, or by electronic means. Disclosure of records to individuals under the FOIA is considered public release of information, except as provided in this paragraph. DA officials will release the following records, upon request, to the persons specified below, even though these records are exempt from release to the general public. The statutory 20 working day limit applies.

(1) *Medical records.* Commanders or chiefs of medical treatment facilities will release information—

(i) On the condition of sick or injured patients to the patient's relatives to the extent permitted by law and regulation.

(ii) That a patient's condition has become critical to the nearest known relative or to the person the patient has named to be informed in an emergency.

(iii) That a diagnosis of psychosis has been made to the nearest known relative or to the person named by the patient.

(iv) On births, deaths, and cases of communicable diseases to local officials (if required by local laws).

(v) Copies of records of present or former soldiers, dependents, civilian employees, or patients in DA medical facilities will be released to the patient or to the patient's representative on written request. The attending physician can withhold records if he or she thinks that release may injure the patient's mental or physical health; in that case, copies of records will be released to the patient's next of kin or legal representative or to the doctor or dentist chosen by the patient. If the patient is adjudged insane, or dies, the copies will be released, on written request, to the patient's next of kin or legal representative.

(vi) Copies of records may be given to a Federal or State hospital or penal institution if the person concerned is an inmate or patient there.

(vii) Copies of records or information from them may be given to authorized representatives of certain agencies. The National Academy of Sciences, the National Research Council, and other accredited agencies are eligible to receive such information when they are engaged in cooperative studies, with the approval of The Surgeon General of the Army. However, certain information on drug and alcohol use cannot be released. AR 600–85 covers the Army's substance abuse program.

(viii) Copies of pertinent parts of a patient's records can be furnished to the staff judge advocate or legal officer of the command in connection with the Government's collection of a claim. If proper, the legal officer can release this information to the tortfeasor's insurer without the patient's consent.

Note: Information released to third parties must be accompanied by a statement of the conditions of release. The statement will specify that the information not be disclosed to other persons except as privileged communication between doctor and patient.

(2) *Military personnel records.* Military personnel records will be released under these conditions:

(i) DA must provide specific information about a person's military service (statement of military service) in response to a request by that person or with that person's written consent to his or her legal representative;

(ii) Papers relating to applications for, designation of beneficiaries under, and allotments to pay premiums for, National Service Life Insurance or Serviceman's Group Life Insurance will be released to the applicant or to the insured. If the insured is adjudged insane (evidence of an insanity judgment must be included) or dies, the records will be released, on request, to designated beneficiaries or to the next of kin;

(iii) Copies of DA documents that record the death of a soldier, a dependent, or a civilian employee will be released, on request, to that person's next of kin, life insurance carrier, and legal representative. A person acting on behalf of someone else concerned with the death (*e.g.*, the executor of a will) may also obtain copies by submitting a written request that includes evidence of his or her representative capacity. That representative may give written consent for release to others; or

(iv) Papers relating to the pay and allowances or allotments of a present or former soldier will be released to the soldier or his or her authorized representative. If the soldier is deceased,

these papers will be released to the next of kin or legal representatives.

(3) *Civilian personnel records.* Civilian Personnel Officers (CPO) with custody of papers relating to the pay and allowances or allotments of current or former civilian employees will release them to the employee or his or her authorized representative. If the employee is deceased, these records will be released to the next of kin or legal representative. However, a CPO cannot release statements of witnesses, medical records, or other reports or documents pertaining to compensation for injuries or death of a DA civilian employee.

(4) *Accused persons.* Release of information to the public concerning accused persons before determination of the case. Such release may prejudice the accused's opportunity for a fair and impartial determination of the case. The following procedures apply:

(i) The following information concerning persons accused of an offense may be released by the convening authority to public news agencies or media. The accused's name, grade or rank, unit, regular assigned duties, and other information as allowed by AR 25–71, paragraph 3–3a. The substance or text of the offense of which the person is accused. The identity of the apprehending or investigating agency and the length or scope of the investigation before apprehension. The factual circumstances immediately surrounding the apprehension, including the time and place of apprehension, resistance, or pursuit. The type and place of custody, if any;

(ii) *Information that will not be released.* Before evidence has been presented in open court, subjective observations or any information not incontrovertibly factual will not be released. Background information or information relating to the circumstances of an apprehension may be prejudicial to the best interests of the accused, and will not be released unless it serves a law enforcement function. The following kinds of information will not be released: Observations or comments on an accused's character and demeanor, including those at the time of apprehension and arrest or during pretrial custody. Statements, admissions, confessions, or alibis attributable to an accused, or the fact of refusal or failure of the accused to make a statement. Reference to confidential sources, investigative techniques and procedures, investigator notes, and activity files. This includes reference to fingerprint tests, polygraph examinations, blood tests, firearms identification tests, or similar laboratory tests or examinations. Statements as to the identity, credibility, or testimony of prospective witnesses. Statements concerning evidence or argument in the case, whether or not that evidence or argument may be used at the trial. Any opinion on the accused's guilt. Any opinion on the possibility of a plea of guilty to the offense charged, or of a plea to a lesser offense;

(iii) *Other considerations.* Photographing or televising the accused. DA personnel should not encourage or volunteer assistance to news media in photographing or televising an accused or suspected person being held or transported in military custody. DA representatives should not make photographs of an accused or suspect available unless a law enforcement function is served. Requests from news media to take photographs during courts-martial are governed by AR 360–1;

(iv) *Fugitives from justice.* This section does not restrict the release of information to enlist public aid in apprehending a fugitive from justice; or

(v) *Exceptional cases.* Permission to release information from military personnel records to public news agencies or media may be requested from The Judge Advocate General (TJAG). Requests for information from military personnel records will be processed according to this part.

(5) *Litigation, tort claims, and contract disputes.* Release of information or records under this section are subject to the time limitations prescribed by the FOIA. The requester must be advised of the reasons for nonrelease or referral.

(i) *Litigation.* Each request for a record related to pending litigation involving the United States will be referred to the staff judge advocate or legal officer of the command. He or she will promptly inform the Litigation Division, U.S. Army Legal Services Agency (USALSA), of the substance of the request and the content of the record requested. (Mailing address: U.S. Army Litigation Center, 901 N. Stuart Street, Arlington, VA 22203–1837. If information is released for use in litigation involving the United States, the Chief, Army Litigation Division (AR 27–40, para 1–4d) must be advised of the release. He or she will note the release in such investigative reports. Information or records normally exempted from release (*i.e.*, personnel and medical records) may be releasable to the judge or court concerned, for use in litigation to which the United States is not a party. Refer such requests to the local staff judge advocate or legal officer, who will coordinate it with the Litigation Center, USALSA.

(ii) *Tort claims.* A claimant or a claimant's attorney may request a record that relates to a pending administrative tort claim filed against the DA. Refer such requests promptly to the claims approving or settlement authority that has monetary jurisdiction over the pending claim. These authorities will follow AR 27–20. The request may concern an incident in which the pending claim is not as large as a potential claim; in such a case, refer the request to the authority that has monetary jurisdiction over the potential claim. A potential claimant or his or her attorney may request information under circumstances clearly indicating that it will be used to file a tort claim, though none has yet been filed. Refer such requests to the staff judge advocate or legal officer of the command. That authority, when subordinate, will promptly inform the Chief, U.S. Army Claims Service (USACS), of the substance of the request and the content of the record. (Mailing address: U.S. Army Claims Service, ATTN: JACS–TCC, Fort George G. Meade, MD 20755–5360. IDA officials who receive requests will refer them directly to the Chief, USACS. They will also advise the requesters of the referral and the basis for it. The Chief, USACS, will process requests according to this part and AR 27–20, paragraph 1–10.

(iii) *Contract disputes.* Each request for a record that relates to a potential contract dispute or a dispute that has not reached final decision by the contracting officer will be treated as a request for procurement records and not as litigation. However, the officials will consider the effect of release on the potential dispute. Those officials may consult with the USALSA, Contract Appeals Division. (Mailing address: U.S. Army Legal Services Agency, ATTN: JALS–CA, 901 North Stuart Street, Arlington, VA 22203. If the request is for a record that relates to a pending contract appeal to the Armed Services Board of Contract Appeals, or to a final decision that is still subject to appeal (*i.e.*, 90 days have not lapsed after receipt of the final decision by the contractor) then the request will be: Treated as involving a contract dispute; and referred to the USALSA, Contract Appeals Division.

(6) *Special nuclear material.* Dissemination of unclassified information concerning physical protection of special nuclear material.

(i) Unauthorized dissemination of unclassified information pertaining to security measures, including security plans, procedures, and equipment for the physical protection of special

nuclear material, is prohibited under 10 U.S.C. 128.

(ii) This prohibition shall be applied by the Deputy Chief of Staff, G–3 as the IDA, to prohibit the dissemination of any such information only if and to the extent that it is determined that the unauthorized dissemination of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of illegal production of nuclear weapons, theft, diversion, or sabotage of special nuclear materials, equipment, or facilities.

(iii) In making such a determination, Army personnel may consider what the likelihood of an illegal production, theft, diversion, or sabotage would be if the information proposed to be prohibited from dissemination were at no time available for dissemination.

(iv) Army personnel shall exercise the foregoing authority to prohibit the dissemination of any information described so as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security, and upon a determination that the unauthorized dissemination of such information could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of illegal production of nuclear weapons, theft, diversion, or sabotage of special nuclear materials, equipment, or facilities.

(v) Army employees shall not use this authority to withhold information from the appropriate committees of Congress.

(7) *Names and duty addresses.* Lists of names, including telephone directories, organizational charts, and/or staff directories published by installations or activities, and other personally identifying information will ordinarily be withheld when requested under the FOIA. This does not preclude a discretionary release of names and duty information of personnel who, by the nature of their position and duties, frequently interact with the public, such as general officers, public affairs officers, and other personnel designated as official command spokespersons. The IDA for telephone directories is delegated to the DA, FOIA/PA Office. Public Affairs Offices may, after careful analysis, release information determined to have legitimate news value, such as notices of personnel reassignments to new units or installations within the continental United States, results of selection/promotion boards, school graduations/completions, and awards and similar personal achievements. They may release the names and duty addresses of key officials, if such release is determined to be in the interests of advancing official community relation's functions.

(c) *Requests from government officials.* Requests from officials of State or local Governments for Army Activity records shall be considered the same as any other requester. Requests from members of Congress not seeking records on behalf of a Congressional Committee, Subcommittee, either House sitting as a whole, or made on behalf of their constituents shall be considered the same as any other requester. Requests from officials of foreign governments shall be considered the same as any other requester; however, Army Intelligence elements are statutorily prohibited from releasing records responsive to requests made by any foreign government or a representative of a foreign government. Requests from officials of foreign governments that do not invoke the FOIA shall be referred to appropriate foreign disclosure channels and the requester so notified.

(d) *Privileged release outside of the FOIA to U.S. government officials.* Records exempt from release to the public under the FOIA may be disclosed in accordance with Army regulations to agencies of the Federal Government, whether legislative, executive, or administrative, as follows:

(1) In response to a request of a Committee or Subcommittee of Congress, or to either House sitting as a whole in accordance with DoDD 5400.4. The Army implementing directive is AR 1–20. Commanders or chiefs will notify the Chief of Legislative Liaison of all releases of information to members of Congress or staffs of congressional committees. Organizations that in the normal course of business are required to provide information to Congress may be excepted. Handle requests by members of Congress (or staffs of congressional committees) for inspection of copies of official records as follows:

(i) National security classified records, follow AR 380–5;

(ii) Civilian personnel records, members of Congressional Committees, Subcommittees, or Joint Committees may examine official personnel folders to the extent that the subject matter falls within their established jurisdictions, as permitted by 5 CFR 297.401(i);

(iii) *Information related to disciplinary action.* This paragraph refers to records of trial by courts-martial; nonjudicial punishment of military personnel under the Uniform Code of Military Justice, Article 15; nonpunitive measures such as administrative reprimands and admonitions; suspensions of civilian employees; and similar documents. If DA has specific instructions on the request, the following will apply. Subordinate commanders will not release any information without securing the consent of the proper installation commander. The installation commander may release the information unless the request is for a classified or ''FOUO'' document. In that case the commander will refer the request promptly to the Chief of Legislative Liaison for action, including the recommendations of the transmitting agency and copies of the requested records with the referral.

(iv) *Military personnel records.* Only HQDA can release information from these records. Custodians will refer all requests from Congress directly and promptly to the Chief of Legislative Liaison, HQDA, Washington, DC 20310–1600.

(v) *Criminal investigation records.* Only the Commanding General, U.S. Army Criminal Investigation Command (USACIDC), can release any USACIDC-originated criminal investigation file. For further information, see AR 195–2.

(vi) *Other exempt records.* Commanders or chiefs will refer requests for all other categories of exempt information directly to the Chief of Legislative Liaison. They will include a copy of the material requested and, as appropriate, recommendations concerning release or denial.

(vii) *All other records.* The commander or chief with custody of the records will furnish all other information promptly; to other Federal Agencies, both executive and administrative, as determined by the head of an Army Activity or designee; or in response to an order of a Federal court, Army Activities shall release information along with a description of the restrictions on its release to the public;

(viii) *Disciplinary actions and criminal investigations.* Requests for access to, or information from, the records of disciplinary actions or criminal investigations will be honored if proper credentials are presented. Representatives of the Office of Personnel Management may be given information from personnel files of employees actually employed at organizations or activities. Each such request will be considered on its merits. The information released will be the

minimum required in connection with the investigation being conducted.

(ix) *Other types of requests.* All other official requests received by DA elements from agencies of the executive branch (including other military departments) will be honored, if there are no compelling reasons to the contrary. If there are reasons to withhold the records, the requests will be submitted for determination of the propriety of release to the appropriate addresses shown in Appendix B of this part.

(2) Army Activities shall inform officials receiving records under the provisions of this section that those records are exempt from public release under the FOIA. Army Activities also shall advise officials of any special handling instructions. Classified information is subject to the provisions of DoD 5200.1–R, and information contained in Privacy Act systems of records is subject to DoD 5400.11–R.

(e) *Consultation with affected DoD component.* (1) When an Army Activity receives a FOIA request for a record in which an affected Army or DoD organization (including a Combatant Command) has a clear and substantial interest in the subject matter, consultation with that affected Army or DoD organization is required. As an example, where an Army Activity receives a request for records related to DoD operations in a foreign country, the cognizant Combatant Command for the area involved in the request shall be consulted before a release is made. Consultations may be telephonic, electronic, or in hard copy.

(2) The affected Activity shall review the circumstances of the request for host-nation relations, and provide, where appropriate, FOIA processing assistance to the responding DoD Component regarding release of information. Responding Army Activities shall provide copies of responsive records to the affected DoD Component when requested. The affected DoD Component shall receive a courtesy copy of all releases in such circumstances.

(3) Nothing in § 518.19 shall impede the processing of the FOIA request initially received by an Army Activity.

§ 518.16 Initial determinations.

(a) *Initial denial authority.* The DA officials are designated as the Army's only IDAs. Only an IDA, his or her delegate, or the Secretary of the Army can deny FOIA requests for DA records. Each IDA will act on direct and referred requests for records within his or her area of functional responsibility. (See the proper AR in the 10 series for full discussions of these areas. Included are records created or kept within the IDA's area of responsibility; records retired by, or referred to, the IDA's headquarters or office; and records of predecessor organizations. If a request involves the areas of more than one IDA, the IDA to whom the request was originally addressed will normally respond to it; however, the affected IDAs may consult on such requests and agree on responsibility for them. IDAs will complete all required coordination at initial denial level. This includes classified records retired to the NARA when a mandatory declassification review is necessary. Requests and/or responsive documents should not be sent to the DA FOIA/PA Office for initial denial authority or to forward to other offices within the DA.

(b) FOIA requesters may ultimately appeal if they are dissatisfied with adverse determinations. It is crucial to forward complete packets to the IDAs. Ensure cover letters list all attachments and describe from where the records were obtained, *i.e.,* a PA system of records (including the applicable systems notice), or other. If a FOIA action is complicated, include a chronology of events to assist the IDA in understanding what happened in the course of processing the FOIA request. If a file does not include documentation described below, include the tab, and insert a page marked ''not applicable'' or ''not used.'' The order and contents of FOIA file attachments follow: (Tab A or 1) The original FOIA request and envelope (if applicable); (Tab B or 2) The response letter; (Tab C or 3) Copies of all records entirely released, single-sided; (Tab D or 4) Copies of administrative processing documents, including extension letters and ''no records'' certificates, in chronological order; (Tab E or 5) Copies of all records partially released or entirely denied, single-sided. For partially released records, mark in yellow highlighter (or other readable highlighter) those portions withheld; and (Tab F or 6) Legal opinions(s).

(c) The initial determination of whether to make a record available or grant a fee waiver upon request may be made by any suitable official designated by the Army Activity in published regulations. The presence of the marking ''FOUO'' does not relieve the designated official of the responsibility to review the requested record for the purpose of determining whether an exemption under this part is applicable and should be invoked. IDAs may delegate all or part of their authority to a division chief under its supervision within the Agency in the grade of 05/civilian equivalent. Requests for delegation authority below this level must be submitted, after coordination, to the DA FOIA/PA Office, with detailed justification, for approval. Such delegations must not slow FOIA actions. If an IDA's delegate denies a FOIA or fee waiver request, the delegate must clearly state that he or she is acting for the IDA and identify the IDA by name and position in the written response to the requester. IDAs will send only the names, offices, and telephone numbers of their delegates to the DA, FOIA/PA Office. IDAs will keep this information current.

(d) The officials designated by Army Activities to make initial determinations should consult with public affairs officers (PAOs) to become familiar with subject matters that are considered to be newsworthy, and advise PAOs of all requests from news media representatives. In addition, the officials should inform PAOs in advance when they intend to withhold or partially withhold a record, if it appears that the withholding action may be challenged in the media. A FOIA release or denial action, appeal, or court review may generate public or press interest. In such case, the IDA (or delegate) should consult the Chief of Public Affairs or the command or organization PAO. The IDA should inform the PAO contacted of the issue and obtain advice and recommendations on handling its public affairs aspect. Any advice or recommendations requested or obtained should be limited to this aspect. Coordination must be completed within the statutory 20 working day FOIA response limit. (The point of contact for the Army Chief of Public Affairs is HQDA (SAPA–OSR), Washington D.C. 20310–1500). If the request involves actual or potential litigation against the United States, release must be coordinated with The Judge Advocate General (TJAG).

(e) The following officials are designated IDAs for the areas of responsibility outlined below:

(1) The Administrative Assistant to the Secretary of the Army is authorized to act for the Secretary of the Army on requests for all records maintained by the Office of the Secretary of the Army and its serviced activities as well as requests requiring the personal attention of the Secretary of the Army. This also includes civilian Equal Employment Opportunity (EEO) actions. (See DCS, G–1 for military Equal Opportunity (EO) actions). The Administrative Assistant to the Secretary of the Army has delegated its authority to the Chief Attorney and Legal Services Directorate, U.S. Army Resources & Programs

Agency. (See DCS, G1 for military Equal Opportunity (EO) actions)

(2) The Assistant Secretary of the Army (Financial Management and Comptroller) is authorized to act on requests for finance and accounting records. Requests for CONUS finance and accounting records should be referred to the Defense Finance and Accounting Service (DFAS). The Chief Attorney and Legal Services Directorate, acts on requests for non-finance and accounting records of the Assistant Secretary of the Army (Financial Management and Comptroller).

(3) The Assistant Secretary of the Army (Acquisition, Logistics, & Technology) is authorized to act on requests for procurement records other than those under the purview of the Chief of Engineers and the Commander, U.S. Army Materiel Command. The Chief Attorney and Legal Services Directorate, acts on requests for non-procurement records of the Assistant Secretary of the Army (Acquisition, Logistics and Technology).

(4) The Deputy Assistant Secretary of the Army (Civilian Personnel Policy)/ Director of Civilian Personnel, Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs) is authorized to act on requests for civilian personnel records, personnel administration and other civilian personnel matters, except for EEO (civilian) matters which will be acted on by the Administrative Assistant to the Secretary of the Army. The Deputy Assistant Secretary of the Army (Civilian Personnel Policy)/Director of Civilian Personnel has delegated this authority to the Chief, Policy and Program Development Division.

(5) The Chief Information Officer, G–6 is authorized to act on requests for records pertaining to Army Information Technology, command, control communications and computer systems and the Information Resources Management Program (automation, telecommunications, visual information, records management, publications and printing).

(6) The Inspector General is authorized to act on requests for all Inspector General Records.

(7) The Auditor General is authorized to act on requests for records relating to audits done by the U.S. Army Audit Agency under AR 10–2. This includes requests for related records developed by the Audit Agency.

(8) The Director of the Army Staff is authorized to act on requests for all records of the Chief of Staff and its Field Operating Agencies. The Director of the Army Staff has delegated its authority to the Chief Attorney and Legal Services Directorate, U.S. Army Resources & Programs Agency. The Chief Attorney and Legal Services Director, U.S. Army Resources & Programs Agency acts on requests for records of the Chief of Staff and its Field Operating Agencies. (See TJAG for the (GOMO) actions).

(9) The Deputy Chief of Staff, G–3 is authorized to act on requests for records relating to International Affairs policy, planning, integration and assessments, strategy formulation, force development, individual and unit training policy, strategic and tactical command and control systems, nuclear and chemical matters, use of DA forces.

(10) The Deputy Chief of Staff, G–8 is authorized to act on requests for records relating to programming, material integration and externally directed reviews.

(11) The Office of the Deputy Chief of Staff, G–1 is authorized to act on the following records: Personnel board actions, Equal Opportunity (military) and sexual harassment, health promotions, physical fitness and well being, command and leadership policy records, HIV and suicide policy, substance abuse programs except for individual treatment records which are the responsibility of the Surgeon General, retiree benefits, services, and programs, (excluded are individual personnel records of retired military personnel, which are the responsibility of the U.S. Army Human Resources Command-St. Louis (AHRC–STL), DA dealings with Veterans Affairs, U.S. Soldier's and Airmen's Home, retention, promotion, and separation; recruiting and MOS policy issues, personnel travel and transportation entitlements, military strength and statistics, The Army Librarian, demographics, and Manprint.

(12) The Deputy Chief of Staff, G–4 is authorized to act on requests for records relating to DA logistical requirements and determinations, policy concerning materiel maintenance and use, equipment standards, and logistical readiness.

(13) The Chief of Engineers is authorized to act on requests for records involving civil works, military construction, engineer procurement, and ecology; and the records of the U.S. Army Engineer divisions, districts, laboratories, and field operating agencies.

(14) The Surgeon General, Commander, U.S. Army Medical Command, is authorized to act on requests for medical research and development records, and the medical records of active duty military personnel, dependents, and persons given physical examination or treatment at DA medical facilities, to include alcohol and drug treatment/test records.

(15) The Chief of Chaplains is authorized to act on requests for records involving ecclesiastical relationships, rites performed by DA chaplains, and nonprivileged communications relating to clergy and active duty chaplains' military personnel files.

(16) The Judge Advocate General is authorized to act on requests for records relating to claims, courts-martial, legal services, administrative investigations, and similar legal records. TJAG is also authorized to act on requests for the GOMO actions and records described elsewhere in this regulation, especially if those records relate to litigation in which the United States has an interest. In addition, TJAG is authorized to act on requests for records that are not within the functional areas of responsibility of any other IDA, including, but not limited to requests for records for Commands, and activities.

(17) The Chief, National Guard Bureau, is authorized to act on requests for all personnel and medical records of retired, separated, discharged, deceased, and active Army National Guard military personnel, including technician personnel, unless such records clearly fall within another IDA's responsibility. This authority includes, but is not limited to, National Guard organization and training files; plans, operations, and readiness files, policy files, historical files, files relating to National Guard military support, drug interdiction, and civil disturbances; construction, civil works, and ecology records dealing with armories, facilities within the States, ranges, etc.; Equal Opportunity investigative records; aviation program records and financial records dealing with personnel, operation and maintenance, and equipment budgets.

(18) The Chief of Army Reserve is authorized to act on requests for all personnel and medical records of retired, separated, discharged, deceased, and reserve component military personnel, and all U.S. Army Reserve (USAR) records, unless such records clearly fall within another IDA's responsibility. Records under the responsibility of the Chief of Army Reserve include records relating to USAR plans, policies, and operations; changes in the organizational status of USAR units; mobilization and demobilization policies, active duty tours, and the Individual Mobilization Augmentation program.

(19) The Commander, United States Army Materiel Command (AMC) is authorized to act on requests for the records of AMC headquarters and to subordinate commands, units, and

activities that relate to procurement, logistics, research and development, and supply and maintenance operations.

(20) The Provost Marshal General (PMG) is authorized to act on all requests for provost marshal activities and law enforcement functions for the army, all matters relating to police intelligence, physical security, criminal investigations, corrections and internment (to include confinement and correctional programs for U.S. prisoners, criminal investigations, provost marshal activities, and military police support. The PMG is responsible for the Office of Security, Force Protection, and Law Enforcement Division and is the functional proponent for AR 190-series (Military Police) and 195-series (Criminal Investigation), AR 630–10 Absent Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings, and AR 633–30, Military Sentences to Confinement.

(21) The Commander, U.S. Army Criminal Investigation Command (USACIDC), is authorized to act on requests for criminal investigative records of USACIDC headquarters, its subordinate activities, and military police reports. This includes criminal investigation records, investigation-in-progress records, and all military police records and reports.

(22) The Commander, United States Army Human Resources Command (USAHRC), is authorized to act on requests for military personnel files relating to active duty (other than those of reserve and retired personnel) military personnel matters, personnel locator, physical disability determinations, and other military personnel administration records; records relating to military casualty and memorialization activities; heraldic activities, voting, records relating to identification cards, naturalization and citizenship, commercial solicitation, Military Postal Service Agency and Army postal and unofficial mail service.

(23) The Commander, USARC-StL has been delegated authority to act on behalf of the USAHRC for requests concerning all personnel and medical records of retired, separated, discharged, deceased, and reserve component military personnel, unless such records clearly fall within another IDA's authority. The authority does not include records relating to USAR plans, policies, and operations; changes in the organizational status of USAR units, mobilization and demobilization policies; active duty tours, and the individual mobilization augmentation program.

(24) The Assistant Chief of Staff for Installation Management (ACSIM) is authorized to act on requests for records relating to planning, programming, execution and operation of Army installations. This includes base realignment and closure activities, environmental activities other than litigation, facilities and housing activities, and installation management support activities.

(25) The Commander, United States Army Intelligence and Security Command, is authorized to act on requests for intelligence and security records, foreign scientific and technological records, intelligence training, intelligence threat assessments, and foreign liaison information.

(26) The Commander, U.S. Army Safety Center, is authorized to act on requests for Army safety records.

(27) The Commander, United States Army Test and Evaluation Command (ATEC), is authorized to act on requests for the records of ATEC headquarters, its subordinate commands, units, and activities that relate to test and evaluation operations.

(28) The General Counsel, Army and Air Force Exchange Service (AAFES), is authorized to act on requests for AAFES records, under AR 60–20/AFR 147–14.

(29) Special IDA authority for time-event related records may be designated on a case-by-case basis. These will be published in the **Federal Register**. You may contact the DA, FOIA/PA Office to obtain current information on special delegations.

(f) *Reasons for not releasing a record.* The following are reasons for not complying with a request for a record under 5 U.S.C. 552(a)(3).

(1) *No records.* A reasonable search of files failed to identify responsive records. The records custodian will prepare a detailed no records certificate. This certificate must include, at a minimum, what areas or offices were searched and how the search was conducted (manually, by computer, etc.). The certificate will be signed by the records custodian and will include his or her grade and title. The original certificate will be forwarded to the IDA. Preprinted ''check-the-block'' or ''fill-in-the-blank'' no records certificates are not authorized.

(2) *Referrals.* The request is transferred to another Army Activity or DoD Component, or to another Federal Agency.

(3) *Request withdrawn.* The request is withdrawn by the requester.

(4) *Fee-related reason.* The requester is unwilling to pay fees associated with a request; the requester is past due in the payment of fees from a previous FOIA request; or the requester disagrees with the fee estimate.

(5) *Records not reasonably described.* A record has not been described with sufficient particularity to enable the Army or DoD Component to locate it by conducting a reasonable search.

(6) *Not a proper FOIA request for some other reason.* The requester has failed unreasonably to comply with procedural requirements, other than fee-related, imposed by this part or Army Activity supplementing regulations.

(7) *Not an agency record.* The information requested is not a record within the meaning of the FOIA and this part.

(8) *Duplicate request.* The request is a duplicate request (*e.g.*, a requester asks for the same information more than once). This includes identical requests received via different means (*e.g.*, electronic mail, facsimile, mail, and courier) at the same or different times.

(9) *Other (specify).* Any other reason a requester does not comply with published rules other than those outlined in paragraphs (f) (1) through (8) of this section.

(10) *Partial or total denial.* The record is denied in whole or in part in accordance with procedures set forth in the FOIA.

(g) *Denial tests.* To deny a requested record that is in the possession and control of an Army Activity, it must be determined that the record is exempt under one or more of the exemptions of the FOIA. An outline of the FOIA's exemptions is contained in Subpart C of this part.

(h) *Reasonably segregable portions.* Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. Unless indicating the extent of the deletion would harm an interest protected by an exemption, the amount of deleted information shall be indicated on the released portion of paper records by use of brackets or darkened areas indicating removal of information. In no case shall the deleted areas be left ''white'' without the use of brackets to show the bounds of deleted information. In the case of electronic deletion, or deletion in audiovisual or microfiche records, if technically feasible, the amount of redacted information shall be indicated at the place in the record such deletion was made, unless including the indication would harm an interest protected by the exemption under which the deletion is made. This may be done by use of

brackets, shaded areas, or some other identifiable technique that will clearly show the limits of the deleted information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not reasonable to segregate portions of the record for release.

(i) *Response to requester.* Whenever possible, initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 20 working days after receipt of a proper request by the official designated to respond. When an Army Activity has a significant number of pending requests which prevent a response determination within the 20 working day period, the requester shall be so notified in an interim response, and advised whether their request qualifies for the fast track or slow track within the Army Activity's multitrack processing system. Requesters who do not meet the criteria for fast track processing shall be given the opportunity to limit the scope of their request in order to qualify for fast track processing.

(1) When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with preliminary procedural requirements.

(2) When a request for a record is denied in whole or in part, the official designated to respond shall inform the requester in writing of the name and title or position of the official who made the determination, and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemptions on which the denial is based, inclusive of a brief statement describing what the exemption(s) cover. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable Executive Order criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to a higher final authority within the Army Activity. The IDA will inform the requester of his or her right to appeal, in whole or part, the denial of the FOIA or fee waiver request and that the appeal must be sent through the IDA to the Secretary of the Army (ATTN: OGC).

(3) The final response to the requester should contain information concerning the fee status of the request, consistent with the provisions of Subpart F, of this part. When a requester is assessed fees for processing a request, the requester's fee category shall be specified in the response letter. Activities also shall provide the requester with a complete cost breakdown (*e.g.*, 115 pages of office reproduction at $0.15 per page; 5 minutes of computer search time at $43.50 per minute, 3 hours of professional level search at $44 per hour, etc.) in the response letter.

(4) The explanation of the substantive basis for a denial shall include specific citation of the statutory exemption applied under provisions of this part; *e.g.*, 5 U.S.C. 552 (b)(1). Merely referring to a classification; to a ''FOUO'' marking on the requested record; or to this part or an Army Activity's regulation does not constitute a proper citation or explanation of the basis for invoking an exemption.

(5) When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

(6) When denying a request for records, in whole or in part, an Army Activity shall make a reasonable effort to estimate the volume of the records denied and provide this estimate to the requester, unless providing such an estimate would harm an interest protected by an exemption of the FOIA. This estimate should be in number of pages or in some other reasonable form of estimation, unless the volume is otherwise indicated through deletions on records disclosed in part.

(7) When denying a request for records in accordance with a statute qualifying as a FOIA exemption 3 statute, Army Activities shall, in addition to stating the particular statute relied upon to deny the information, also state whether a court has upheld the decision to withhold the information under the particular statute, and a concise description of the scope of the information being withheld.

(j) *Extension of time.* In unusual circumstances, when additional time is needed to respond to the initial request, the Army Activity shall acknowledge the request in writing within 20 working days, describe the circumstances requiring the delay, and indicate the anticipated date for a substantive response that may not exceed 10 additional working days, except as provided below:

(1) With respect to a request for which a written notice has extended the time limits by 10 additional working days, and the Activity determines that it cannot make a response determination within that additional 10 working day period, the requester shall be notified and provided an opportunity to limit the scope of the request so that it may be processed within the extended time limit, or an opportunity to arrange an alternative time frame for processing the request or a modified request. Refusal by the requester to reasonably modify the request or arrange for an alternative time frame shall be considered a factor in determining whether exceptional circumstances exist with respect to Army Activity's request backlogs. Exceptional circumstances do not include a delay that results from predictable activity backlogs, unless the Army Activity demonstrates reasonable progress in reducing its backlog.

(2) Unusual circumstances that may justify delay are: the need to search for and collect the requested records from other facilities that are separate from the office determined responsible for a release or denial decision on the requested information; the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are requested in a single request; and the need for consultation, which shall be conducted with all practicable speed, with other agencies having a substantial interest in the determination of the request, or among two or more Army Activities or DoD Components having a substantial subject-matter interest in the request.

(3) Army Activities may aggregate certain requests by the same requester, or by a group of requesters acting in concert, if the Army Activity reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances set forth in paragraph (j)(2) of this section, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated. If the requests are aggregated under these conditions, the requester or requesters shall be so notified.

(4) In cases where the statutory time limits cannot be met and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester with a request that he agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made. Army Activities are reminded that the requester still retains the right to treat

this delay as a defacto denial with full administrative remedies. Only the responsible IDA can extend it, and the IDA must first coordinate with the OGC.

(5) As an alternative to the taking of formal extensions of time the negotiation by the cognizant FOIA coordinating office of informal extensions in time with requesters is encouraged where appropriate.

(k) *Misdirected requests.* Misdirected requests shall be forwarded promptly to the Army Activity or other Federal Agency with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the Army Activity that manages the records requested.

(l) *Records of non-U.S. Government source.* When a request is received for a record that falls under exemption 4, that was obtained from a non-U.S. Government source, or for a record containing information clearly identified as having been provided by a non-U.S. Government source, the source of the record or information [also known as ''the submitter'' for matters pertaining to proprietary data under 5 U.S.C. 552, FOIA, Exemption (b)(4)] and E.O. 12600], shall be notified promptly of that request and afforded reasonable time (14 calendar days) to present any objections concerning the release, unless it is clear that there can be no valid basis for objection. This practice is required for those FOIA requests for data not deemed clearly exempt from disclosure under exemption (b)(4) of 5 U.S.C. 552, The FOIA. If, for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and established that it would be made available to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. The final decision to disclose information claimed to be exempt under exemption (b)(4) shall be made by an official equivalent in rank to the official who would make the decision to withhold that information under FOIA. When a substantial issue has been raised, the Army Activity may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved prior to making an agency determination. When the source seeks a restraining order or take court action to prevent release of the record or information, the requester shall be notified, and action on the request normally shall not be taken until after the outcome of that court action is known. When the requester brings court action to compel disclosure, the submitter shall be promptly notified of this action.

(1) If the submitted information is a proposal in response to a solicitation for a competitive proposal, and the proposal is in the possession and control of DA (see 10 U.S.C. 2305(g)), the proposal shall not be disclosed, and no submitter notification and subsequent analysis is required. The proposal shall be withheld from public disclosure pursuant to 10 U.S.C. 2305(g) and exemption (b)(3) of the FOIA. This statute does not apply to bids, unsolicited proposals, or any proposal that is set forth or incorporated by reference in a contract between an Army Activity and the offeror that submitted the proposal. In such situations, normal submitter notice shall be conducted except for sealed bids that are opened and read to the public. The term, proposal, means information contained in or originating from any proposal, including a technical, management, or cost proposal submitted by an offeror in response to solicitation for a competitive proposal, but does not include an offeror's name or total price or unit prices when set forth in a record other than the proposal itself. Submitter notice, and analysis as appropriate, are required for exemption (b)(4) matters that are not specifically incorporated in 10 U.S.C. 2305(g).

(2) If the record or information was submitted on a strictly voluntary basis, absent any exercised authority that prescribes criteria for submission, and after consultation with the submitter, it is absolutely clear that the record or information would customarily not be released to the public, the submitter need not be notified. Examples of exercised authorities prescribing criteria for submission are statutes, Executive Orders, regulations, invitations for bids, requests for proposals, and contracts. Records or information submitted under these authorities are not voluntary in nature. When it is not clear whether the information was submitted on a voluntary basis, absent any exercised authority, and whether it would customarily be released to the public by the submitter, notify the submitter and ask that it describe its treatment of the information, and render an objective evaluation. If the decision is made to release the information over the objection of the submitter, notify the submitter and afford the necessary time to allow the submitter to seek a restraining order, or take court action to prevent release of the record or information.

(3) The coordination provisions of this section also apply to any non-U.S. Government record in the possession and control of the Army or DoD from multi-national organizations, such as the North Atlantic Treaty Organization (NATO), United Nations Commands, the North American Aerospace Defense Command (NORAD), the Inter-American Defense Board, or foreign governments. Coordination with foreign governments under the provisions of this section may be made through Department of State, or the specific foreign embassy.

(m) File of initial denials. Copies of all initial withholdings or denials shall be maintained by each Army Activity in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation. Records denied for any of the reasons contained in § 518.20 shall be maintained for a period of six years to meet the statute of limitations requirement. Records will be maintained in accordance with AR 25–400–2.

(n) *Special mail services.* Army Activities are authorized to use registered mail, certified mail, certificates of mailing, and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence. The requester shall be notified that they are responsible for the full costs of special services.

(o) *Receipt accounts.* The Treasurer of the United States has established two accounts for FOIA receipts, and all money orders or checks remitting FOIA fees should be made payable to the U.S. Treasurer. These accounts shall be used for depositing all FOIA receipts, except receipts for industrially funded and non-appropriated funded activities. Components are reminded that the below account numbers must be preceded by the appropriate disbursing office two digit prefix. Industrially funded and non-appropriated funded activity FOIA receipts shall be deposited to the applicable fund.

(1) Receipt Account 3210 Sale of Publications and Reproductions, FOIA. This account shall be used when depositing funds received from providing existing publications and forms that meet the Receipt Account Series description found in Federal Account Symbols and Titles. Deliver collections within 30 calendar days to the servicing finance and accounting office.

(2) Receipt Account 3210 Fees and Other Charges for Services, FOIA. This account is used to deposit search fees, fees for duplicating and reviewing (in the case of commercial requesters)

records to satisfy requests that could not be filled with existing publications or forms.

§ 518.17 Appeals.

(a) *General.* If the official designated by the Army Activity to make initial determinations on requests for records declines to provide a record because the official considers it exempt under one or more of the exemptions of the FOIA, that decision may be appealed by the requester, in writing, to a designated appellate authority. The appeal should be accompanied by a copy of the letter denying the initial request. Such appeals should contain the basis for disagreement with the initial refusal. Appeal procedures also apply to the disapproval of a fee category claim by a requester, disapproval of a request for waiver or reduction of fees, disputes regarding fee estimates, review on an expedited basis a determination not to grant expedited access to agency records, for no record determinations when the requester considers such responses adverse in nature, not providing a response determination to a FOIA request within the statutory time limits, or any determination found to be adverse in nature by the requester. Upon an IDA's receipt of a no records determination appeal, the IDA will direct the records custodian to conduct another records search and certify, in writing, that is has made a good faith effort that reasonably could be expected to produce the information requested. If no records are again found, the original no records certificate will be forwarded to the IDA for inclusion in the appeals packet. When denials have been made under the provisions of the FOIA and the PA, and the denied information is contained in a PA system of records, appeals shall be processed under both the FOIA and the PA. If the denied information is not maintained in a PA system of records, the appeal shall be processed under the FOIA. If a request is merely misaddressed, and the receiving Army Activity or DoD Component simply advises the requester of such and refers the request to the appropriate Army or DoD Component, this shall not be considered a no record determination.

(1) Appeals of adverse determinations from denial of records or ''no record'' determination, received by Army IDAs must be forwarded through the denying IDA to the Secretary of the Army (ATTN: OGC). On receipt of an appeal, the IDA will—

(i) Send the appeal to the Office of the Secretary of the Army, OGC, together with a copy of the documents that are the subject of the appeal. The cover letter will list all attachments and describe from where the records were obtained, *i.e.,* a PA system of records (including the applicable systems notice, or other. If a file does not include documentation described below, include the tab, and insert a page marked ''not applicable'' or ''not used.'' The order and contents of FOIA file attachments follow: (Tab A or 1) The original FOIA request and envelope (if applicable); (Tab B or 2) The IDA denial letter; (Tab C or 3) Copies of all records entirely released, single-sided; (Tab D or 4) Copies of administrative processing documents, including extension letters and ''no records'' certificates, in chronological order; (Tab E or 5) Copies of all records partially denied or completely denied, single-sided. For records partially denied, mark in yellow highlighter (or other readable highlighter) those portions withheld; and (Tab F or 6) Legal opinions(s); and

(ii) Assist the OGC as requested during his or her consideration of the appeal.

(2) Appeals of denial of records made by the OGC, AAFES, shall be made to the Secretary of the Army when the Commander, AAFES, is an Army officer. Appeals of denial of records made by the OGC, AAFES, shall be made to the Secretary of the Air Force when the Commander is an Air Force officer.

(b) *Time of receipt.* A FOIA appeal has been received by an Army Activity when it reaches the office of an appellate authority having jurisdiction, the OGC. Misdirected appeals should be referred expeditiously to the OGC.

(c) *Time limits.* The requester shall be advised to file an appeal so that it is postmarked no later than 60 calendar days after the date of the initial denial letter. If no appeal is received, or if the appeal is postmarked after the conclusion of this 60-day period, the case may be considered closed. However, exceptions to the above may be considered on a case-by-case basis. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the date of the final response. Records that are denied shall be retained for a period of six years to meet the statute of limitations requirement. Final determinations on appeals normally shall be made within 20 working days after receipt. When an Army Activity has a significant number of appeals preventing a response determination within 20 working days, the appeals shall be processed in a multitrack processing system, based at a minimum, on the three processing tracks established for initial requests. All of the provisions of the FOIA apply also to appeals of initial determinations, to include establishing additional processing queues as needed.

(d) *Delay in responding to an appeal.* If additional time is needed due to the unusual circumstances the final decision may be delayed for the number of working days (not to exceed 10), that were not used as additional time for responding to the initial request. If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The Army Activity will continue to process the case expeditiously.

(e) *Response to the requester.* When the appellate authority (OGC) makes a final determination to release all or a portion of records withheld by an IDA, a written response and a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees. Final refusal of an appeal must be made in writing by the appellate authority or by a designated representative. The response, at a minimum, shall include the following:

(1) The basis for the refusal shall be explained to the requester in writing, both with regard to the applicable statutory exemption or exemptions invoked under provisions of the FOIA, and with respect to other appeal matters;

(2) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification;

(3) The final denial shall include the name and title or position of the official responsible for the denial;

(4) In the case of appeals for total denial of records, the response shall advise the requester that the information being denied does not contain meaningful portions that are reasonably segregable;

(5) When the denial is based upon an exemption 3 statute, the response, in addition to citing the statute relied upon to deny the information, shall state whether a court has upheld the decision to withhold the information under the statute, and shall contain a concise description of the scope of the information withheld; or

(6) The response shall advise the requester of the right to judicial review.

(f) *Consultation.* Final refusal involving issues not previously resolved or that the Army Activity knows to be inconsistent with rulings of other DoD Components ordinarily should not be made before consultation with the Army OGC. Tentative decisions to deny records that raise new or significant legal issues of potential significance to other Agencies of the Government shall be provided to the Army OGC.

§ 518.18 Judicial actions.

(a) This section states current legal and procedural rules for the convenience of the reader. The statements of rules do not create rights or remedies not otherwise available, nor do they bind the DA or DoD to particular judicial interpretations or procedures. A requester may seek an order from a U.S. District Court to compel release of a record after administrative remedies have been exhausted; *i.e.,* when refused a record by the head of a Component or an appellate designee or when the Army Activity has failed to respond within the time limits prescribed by the FOIA and in this part.

(b) The requester may bring suit in the U.S. District Court in the district, in which the requester resides or is the requester's place of business, in the district in which the record is located, or in the District of Columbia.

(c) The burden of proof is on the Army Activity to justify its refusal to provide a record. The court shall evaluate the case de novo (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

(d) When an Army Activity has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, to include negotiating with the requester to modify the scope of their request, the court may retain jurisdiction and allow the Activity additional time to complete its review of the records.

(1) If the court determines that the requester's complaint is substantially correct, it may require the U. S. to pay reasonable attorney fees and other litigation costs.

(2) When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether Army Activity personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit Systems Protection Board shall conduct an investigation to determine whether or not disciplinary action is warranted. The Army Activity is obligated to take the action recommended by the special counsel.

(3) The court may punish the responsible official for contempt when an Army Activity fails to comply with the court order to produce records that it determines have been withheld improperly.

(e) *Non-U. S. Government source information.* A requester may bring suit in an U.S. District Court to compel the release of records obtained from a non-government source or records based on information obtained from a non-government source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the Army Activity shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

(f) *FOIA litigation.* Personnel responsible for processing FOIA requests at the DoD Component level shall be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Component personnel. Whenever a complaint under the FOIA is filed in an U.S. District Court, the Army Activity named in the complaint shall forward a copy of the complaint by any means to HQDA, OTJAG (DAJA–LT), with an information copy to the Army OGC. In the DA, HQDA OTJAG (DAJA–LT), WASH D.C. 20310–2210 is also responsible for forwarding this information to the Office of the Army OGC and to the DA FOIA/PA Office.

(1) *Bases for FOIA lawsuits.* In general, there are four categories of complaints in a FOIA lawsuit; failure to respond to a request within time frames established in the FOIA statute; challenge to the adequacy of search for responsive records; challenge to application of a FOIA Exemption; and procedural challenges, such as application of waiver of fees. The guidance below is intended to cover all categories of complaints. In responding to litigation support requests, bear in mind the type of complaint that has given rise to the lawsuit and provide information, which addresses the specific reason(s) for the complaint.

(2) *Responsibility for FOIA litigation.* For the Army, under the general oversight of the OGC, FOIA litigation is the responsibility of the General Litigation Branch, Army Litigation Division. If you are notified of a FOIA lawsuit involving the Army, contact the General Litigation Branch immediately at: U.S. Army Litigation Center, General Litigation Branch (JALS–LTG), 901 North Stuart Street, Suite 700, Arlington VA 22203–1837. The General Litigation Branch will provide guidance on gathering information and assembling a litigation report necessary to respond to FOIA litigation.

(3) *Litigation reports for FOIA lawsuits.* As with any lawsuit, the Army Litigation Division and DOJ will require a litigation report. This report should be prepared with the assistance, and under the supervision of, the legal advisor. For general guidance on litigation reports, see Army Regulation 27–40, paragraph 3–9. Unlike the usual 60-day time period to respond to complaints under the Federal Rules of Civil Procedure, complaints under the FOIA must be answered within 30 days of the service of the complaint. Therefore, it is imperative to contact the Litigation Division immediately and to begin preparing the litigation report without delay.

(4) *Specific guidance for FOIA litigation reports.* The following is specific guidance for preparing a litigation report in FOIA Litigation. The required material should be indexed and assembled under the following categories:

(i) *Statement of facts.* (Tab A). Provide a chronological statement of all facts related to the FOIA request, beginning with receipt of the request, responses to the request, and searches for responsive records. The statement of facts should refer to supporting enclosed exhibits whenever possible.

(ii) *Responses to pleadings.* (Tab B). If you have been provided a copy of the complaint, provide a line-by-line answer to the factual statements in the pleadings, along with recommendations on whether to admit or deny the allegation.

(iii) *Memorandum of law.* (Tab C). No memorandum of law is necessary in FOIA lawsuits. If records were withheld, provide a written statement explaining the FOIA Exemption used to withhold the information and the rationale for its application in the particular facts of your case. Include here a copy of any legal review

regarding the withholding of the records.

(iv) *Potential witness information.* (Tab D). List the names, addresses, telephone number, facsimile number and e-mail addresses of all potential witnesses. At a minimum, this must include all of the following: the FOIA Officer or Coordinator or other person responsible for processing FOIA requests; the individual(s) who actually conducted the search for responsive records; the legal advisor(s) who reviewed or provided advice on the request; and the point of contact at any office or agency to which the FOIA request was referred.

(v) *Exhibits.* (Tab E). Provide copies of all correspondence regarding the FOIA request. This includes all correspondence between the agency and the requester, including any enclosures; any referrals or forwarding of the request to other agencies or offices; copies of all documents released to the requester pursuant to the request in litigation. If any information is withheld or redacted, provide a complete copy of all withheld information. Identify withheld information by placing brackets around all information withheld and note in the margins of the document the specific FOIA exemption applied to deny release of the document; all records and correspondence forwarded to the IDA, if applicable; all appeals by the requester; if the withheld document is classified, provide a summary of each document withheld. The Summary of classified documents should include the following:

(A) The classification of the document;

(B) The date of the document;

(C) The number of pages of the document;

(D) The author or creator of the document;

(E) The intended or actual recipient of the document;

(F) The subject of the document and an unclassified description of the document sufficient to inform the court of the nature of the contents of the document; and

(G) An explanation of the reason for withholding, including the specific provision(s) of Executive Order 12,958 which permit classification of the information.

(vi) *Draft declarations.* (Tab F). A declaration is a statement for use in litigation made under penalty of perjury pursuant to specific statutory authority (28 U.S.C. 1746) which need not be notarized. Declarations may be used by the Army to support a motion to dismiss or to grant summary judgment. Depending on the basis for the lawsuit, with the assistance of their legal advisor, witnesses should prepare a draft declaration to be included with the litigation report.

(vii) The following is some general guidance on the content of a declaration in FOIA litigation. Identify the declarant and describe his or her qualifications and responsibilities as they relate to the FOIA; provide a statement indicating that the declarant is familiar with the specific request and the general subject matter of the records; include a statement of the searcher's understanding of the exact nature of the request, including any modification (narrowing or expanding the search based on communications with the requester); generally, the factual portion of the declaration should be organized as a chronological statement beginning with receipt of the request; provide a specific description of the system of records searched; and provide a description of procedures used to search for the requested records, (manual search of records, computer database search, etc.). This portion of the declaration is especially important when no records are found. The declaration must reflect an adequate and reasonable search for records in locations where responsive records are likely to be found.

(5) *Special guidance for initial denial authorities.* If any information was withheld, the IDA or person with specific knowledge of the withholding must provide a specific statement of any Exemptions to the FOIA, which were applied to the records.

(i) *Withheld records.* For withheld records, describe in reasonably specific detail all records or parts of records withheld. If the number of records is extensive, use an index of the records and consider numbering the documents to facilitate reference. It is also permissible (and frequently helpful) to include redacted portions of records withheld as attachments or exhibits to the declarations.

(ii) *Exemptions.* Include in the declaration a specific statement demonstrating that all the elements of each FOIA exemption are met.

(iii) *Segregation.* The FOIA requires that all information not subject to an exemption to the FOIA, which can be reasonably segregated from exempt information, must be released to FOIA requesters. In any instance where an entire document is withheld, the individual authorizing the withholding must specifically address that segregation and release of non-exempt material was not possible without rendering the record essentially meaningless. If applicable, this issue must be specifically addressed in the declaration.

(iv) *Sound legal basis.* Army policy promotes careful consideration of FOIA requests and discretionary decisions to disclose information protected under the FOIA. Discretionary disclosures should be made only after full and deliberate consideration of the institutional, commercial, and personal privacy interests that could be implicated by disclosure of the information. The decision to withhold records, in whole or in part, otherwise exempt from disclosure under the FOIA must exhibit a sound legal basis or present an unwarranted risk of adverse impact on the ability of other agencies to protect other important records.

Subpart F—Fee Schedule

§ 518.19 General provisions.

(a) *Authorities.* The FOIA, as amended; the Paperwork Reduction Act (44 U.S.C. 35), as amended; the PA of 1974, as amended; the Budget and Accounting Act of 1921 and the Budget and Accounting Procedures Act, as amended (see 31 U.S.C.); and 10 U.S.C. 2328).

(b) *Application.* The fees described in this Subpart apply to FOIA requests, and conform to the Office of Management and Budget Uniform Freedom of Information Act Fee Schedule and Guidelines. They reflect direct costs for search, review (in the case of commercial requesters), and duplication of documents, collection of which is permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business, nor are they meant as a substitute for any other schedule of fees, such as DoD 7000.14–R, which does not supersede the collection of fees under the FOIA. Nothing in this subpart shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records. A ''statute specifically providing for setting the level of fees for particular types of records'' (5 U.S.C. 552 FOIA, (a)(4)(A)(vi)) means any statute that enables a Government Agency such as the GPO or the NTIS, to set and collect fees. Components should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as GPO or NTIS, they inform requesters of the steps necessary to obtain records from those sources.

(1) The term ''direct costs'' means those expenditures an Activity actually makes in searching for, reviewing (in the case of commercial requesters), and duplicating documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), and the costs of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, heating or lighting the facility in which the records are stored.

(2) The term ''search'' includes all time spent looking, both manually and electronically, for material that is responsive to a request. Search also includes a page-by-page or line-by-line identification (if necessary) of material in the record to determine if it, or portions thereof are responsive to the request. Activities should ensure that searches are done in the most efficient and least expensive manner so as to minimize costs for both the Activity and the requester. For example, Activities should not engage in line-by-line searches, when duplicating an entire document known to contain responsive information, would prove to be the less expensive and quicker method of complying with the request. Time spent reviewing documents in order to determine whether to apply one or more of the statutory exemptions is not search time, but review time.

(3) The term ''duplication'' refers to the process of making a copy of a document in response to a FOIA request. Such copies can take the form of paper copy, microfiche, audiovisual, or machine-readable documentation (*e.g.*, magnetic tape or disc), among others. Every effort will be made to ensure that the copy provided is in a form that is reasonably useable, the requester shall be notified that the copy provided is the best available and that the Activity's master copy shall be made available for review upon appointment. For duplication of computer-stored records, the actual cost, including the operator's time, shall be charged. In practice, if an Activity estimates that assessable duplication charges are likely to exceed $25.00, it shall notify the requester of the estimate, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with Activity personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(4) The term ''review'' refers to the process of examining documents located in response to a FOIA request to determine whether one or more of the statutory exemptions permit withholding. It also includes processing the documents for disclosure, such as excising them for release. Review does not include the time spent resolving general legal or policy issues regarding the application of exemptions. It should be noted that charges for commercial requesters may be assessed only for the initial review. Activities may not charge for reviews required at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption, which is subsequently determined not to apply, may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable.

(c) *Fee restrictions.* No fees may be charged by any Army Activity if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, Activities shall provide the first two hours of search time, and the first one hundred pages of duplication without charge. For example, for a request (other than one from a commercial requester) that involved two hours and fifteen minutes of search time, and resulted in one hundred and twenty-five pages of documents, an Activity would determine the cost of only ten minutes of search time, and only five pages of reproduction. If this processing cost was equal to, or less than the cost to the Activity for billing the requester and processing the fee collected, no charges would result.

(1) Requesters receiving the first two hours of search and the first one hundred pages of duplication without charge are entitled to such only once per request. Consequently, if an Activity, after completing its portion of a request, finds it necessary to refer the request to a subordinate office, another Army Activity or DoD Component, or another Federal Agency for action their portion of the request, the referring Activity shall inform the recipient of the referral of the expended amount of search time and duplication cost to date.

(2) The elements to be considered in determining the ''cost of collecting a fee'' are the administrative costs to the Activity of receiving and recording a remittance, and processing the fee for deposit in the Department of Treasury's special account. The cost to the Department of Treasury to handle such remittance is negligible and shall not be considered in the Activity's determinations.

(3) For the purposes of these restrictions, the word ''pages'' refers to paper copies of a standard size, which will normally be ″8½ × 11″ or ″11 × 14″. Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, however, might meet the terms of the restriction.

(4) In the case of computer searches, the first two free hours will be determined against the salary scale of the individual operating the computer for the purposes of the search. As an example, when the direct costs of the computer central processing unit, input-output devices, and memory capacity equal $40.00 (two hours of equivalent search at the clerical level), amounts of computer costs in excess of that amount are chargeable as computer search time. In the event the direct operating cost of the hardware configuration cannot be determined, computer search shall be based on the salary scale of the operator executing the computer search.

(d) *Fee waivers.* Documents shall be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters when the Activity determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of DA and is not primarily in the commercial interest of the requester.

(1) When assessable costs for a FOIA request total $15.00 or less, fees shall be waived automatically for all requesters, regardless of category.

(2) Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis. Disclosure of the information ''is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government.''

(i) Activities should analyze whether the subject matter of the request involves issues that will significantly contribute to the public understanding of the operations or activities of DA or DoD. Requests for records in the possession of the Army or DoD, which were originated by non-government organizations and are sought for their intrinsic content, rather than informative value, will likely not contribute to public understanding of the operations or activities of either DA or DoD. An example of such records might be press clippings, magazine

articles, or records forwarding a particular opinion or concern from a member of the public regarding an Army or DoD activity. Similarly, disclosures of records of considerable age may or may not bear directly on the current activities of either DA or DoD; however, the age of a particular record shall not be the sole criteria for denying relative significance under this factor. It is possible to envisage an informative issue concerning the current activities of DA or DoD, based upon historical documentation. Requests of this nature must be closely reviewed consistent with the requester's stated purpose for desiring the records and the potential for public understanding of the operations and activities of DA or DoD.

(ii) The informative value of the information to be disclosed requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful, and shall inform the public on the operations or activities of DA or DoD. While the subject of a request may contain information that concerns operations or activities of DA or DoD, it may not always hold great potential for contributing to a meaningful understanding of these operations or activities. An example of such would be a previously released record that has been heavily redacted, the balance of which may contain only random words, fragmented sentences, or paragraph headings. A determination as to whether a record in this situation will contribute to the public understanding of the operations or activities of DA or DoD must be approached with caution, and carefully weighed against the arguments offered by the requester. Another example is information already known to be in the public domain. Disclosure of duplicative, or nearly identical information already existing in the public domain may add no meaningful new information concerning the operations and activities of DA or DoD.

(iii) The contribution to an understanding of the subject by the general public is likely to result from disclosure that will inform, or have the potential to inform the public, rather than simply the individual requester or small segment of interested persons. The identity of the requester is essential in this situation in order to determine whether such requester has the capability and intention to disseminate the information to the public. Mere assertions of plans to author a book, researching a particular subject, doing doctoral dissertation work, or indigence are insufficient without demonstrating the capacity to further disclose the information in a manner that will be informative to the general public. Requesters should be asked to describe their qualifications, the nature of their research, the purpose of the requested information, and their intended means of dissemination to the public.

(iv) Activities must differentiate the relative significance or impact of the disclosure against the current level of public knowledge, or understanding, which exists before the disclosure. In other words, will disclosure on a current subject of wide public interest be unique in contributing previously unknown facts, thereby enhancing public knowledge, or will it basically duplicate what is already known by the general public? A decision regarding significance requires objective judgment, rather than subjective determination, and must be applied carefully to determine whether disclosure will likely lead to a significant public understanding of the issue. Activities shall not make value judgments as to whether the information is important enough to be made public.

(4) Disclosure of the information ''is not primarily in the commercial interest of the requester.''

(i) If the request is determined to be of a commercial interest, Activities should address the magnitude of that interest to determine if the requester's commercial interest is primary, as opposed to any secondary personal or non-commercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records. Where it is difficult to determine whether the requester is of a commercial nature, Activities may draw inference from the requester's identity and circumstances of the request. Activities are reminded that in order to apply the commercial standards of the FOIA, the requester's commercial benefit must clearly override any personal or non-profit interest.

(ii) Once a requester's commercial interest has been determined, Activities should then determine if the disclosure would be primarily in that interest. This requires a balancing test between the commercial interest of the request against any public benefit to be derived as a result of that disclosure. Where the public interest is served above and beyond that of the requester's commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists, and the relative commercial interest of the requester is determined to be greater than the public interest, then a waiver or reduction of fees would be inappropriate. As examples, news media organizations have a commercial interest as business organizations; however, their inherent role of disseminating news to the general public can ordinarily be presumed to be of a primary interest. Therefore, any commercial interest becomes secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research, may recognize a commercial benefit, either directly, or indirectly (through the institution they represent); however, normally such pursuits are primarily undertaken for educational purposes, and the application of a fee charge would be inappropriate. Conversely, data brokers or others who merely compile government information for marketing can normally be presumed to have an interest primarily of a commercial nature.

(5) Activities are reminded that the factors and examples used in this section are not all inclusive. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each request. When the element of doubt as to whether to charge or waive the fee cannot be clearly resolved, Activities should rule in favor of the requester.

(6) In addition, the following additional circumstances describe situations where waiver or reduction of fees are most likely to be warranted:

(i) A record is voluntarily created to prevent an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested; or

(ii) A previous denial of records is reversed in total, or in part, and the assessable costs are not substantial (*e.g.* $15.00—$30.00).

(e) *Fee assessment.* Fees may not be used to discourage requesters, and to this end, FOIA fees are limited to standard charges for direct document search, review (in the case of commercial requesters) and duplication.

(1) In order to be as responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, Activities shall adhere to the following procedures:

(i) Each request must be analyzed to determine the category of the requester. If the Activity determination regarding the category of the requester is different than that claimed by the requester, the Activity should notify the requester to provide additional justification to warrant the category claimed, and that a search for responsive records will not be initiated until agreement has been attained relative to the category of the requester. Absent further category

justification from the requester, and within a reasonable period of time (*i.e.,* 30 calendar days), the Activity shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights of the determination. The requester should be advised that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the Activity;

(ii) Requesters should submit a fee declaration appropriate for the below categories. Commercial requesters should indicate a willingness to pay all search, review and duplication costs. Educational or Noncommercial Scientific Institution or News Media requesters should indicate a willingness to pay duplication charges, if applicable, in excess of 100 pages if more than 100 pages of records are desired. All other requesters should indicate a willingness to pay assessable search and duplication costs;

(iii) Activities must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary among Activities, and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should Activities' actual costs exceed the amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester's agreed amount shall not be charged without the requester's agreement;

(iv) No Army Activity may require advance payment of any fee; *i.e.,* payment before work is commenced or continued on a request, unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.00. As used in this sense, a timely fashion is 30 calendar days from the date of billing (the fees have been assessed in writing) by the Activity;

(v) Where an Activity estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, the Activity shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment;

(vi) Where a requester has previously failed to pay a fee charged in a timely fashion (*i.e.,* within 30 calendar days from the date of the billing), the Activity may require the requester to pay the full amount owed, plus any applicable interest, or demonstrate that he or she has paid the fee, and to make an advance payment of the full amount of the estimated fee before the Activity begins to process a new or pending request from the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717, and confirmed with respective Finance and Accounting Offices;

(vii) After all work is completed on a request, and the documents are ready for release, Activities may request payment before forwarding the documents, particularly for those requesters who have no payment history, or for those requesters who have failed previously to pay a fee in a timely fashion (*i.e.,* within 30 calendar days from the date of the billing;

(viii) The administrative time limits of the FOIA will begin only after the Activity has received a willingness to pay fees and satisfaction as to category determination, or fee payments (if appropriate); and

(ix) Activities may charge for time spent searching for records, even if that search fails to locate records responsive to the request. Activities may also charge search and review (in the case of commercial requesters) time if records located are determined to be exempt from disclosure. In practice, if the Activity estimates that search charges are likely to exceed $25.00, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with Activity personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(2) *Commercial Requesters.* Fees shall be limited to reasonable standard charges for document search, review and duplication when records are requested for commercial use. Requesters must reasonably describe the records sought.

(i) The term ''commercial use'' request refers to a request from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, Activities must determine the use to which a requester will put the documents requested. Moreover, where an Activity has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, Activities should seek additional clarification before assigning the request to a specific category.

(ii) When Activities receive a request for documents for commercial use, they should assess charges, which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters (unlike other requesters) are not entitled to two hours of free search time, nor 100 free pages of reproduction of documents. Moreover, commercial requesters are not normally entitled to a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. However, because use is the exclusive determining criteria, it is possible to envision a commercial enterprise making a request that is not for commercial use. It is also possible that a non-profit organization could make a request that is for commercial use. Such situations must be addressed on a case-by-case basis.

(3) *Educational institution requesters.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by an educational institution whose purpose is scholarly research. Requesters must reasonably describe the records sought. The term ''educational institution'' refers to a pre-school, a public or private elementary or secondary school, an institution of graduate high education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. Fees shall be waived or reduced in the public interest if the criteria above have been met.

(4) *Non-commercial scientific institution requesters.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a non-commercial scientific institution whose purpose is scientific research. Requesters must reasonably describe the records sought. The term ''non-commercial scientific institution'' refers to an institution that is not operated on a ''commercial'' basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(5) *Activities shall provide documents to requesters for the cost of duplication alone, excluding charges for the first 100 pages.* To be eligible for inclusion in these categories, requesters must

show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of scholarly (from an educational institution) or scientific (from a non-commercial scientific institution) research.

(6) *Representatives of the news media.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a representative of the news media. Requesters must reasonably describe the records sought.

(i) The term ''representative of the news media'' refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. These examples are not meant to be all-inclusive. Moreover, as traditional methods of news delivery evolve (*e.g.,* electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of ''freelance'' journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but Activities may also look to the past publication record of a requester in making this determination.

(ii) To be eligible for inclusion in this category, a requester must meet the criteria in paragraph (e)(6)(i) of this section, and his or her request must not be made for commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. For example, a document request by a newspaper for records relating to the investigation of a defendant in a current criminal trial of public interest could be presumed to be a request from an entity eligible for inclusion in this category, and entitled to records at the cost of reproduction alone (excluding charges for the first 100 pages).

(iii) ''Representative of the news media'' does not include private libraries, private repositories of Government records, information vendors, data brokers or similar marketers of information whether to industries and businesses, or other entities.

(7) *All Other Requesters.* Activities shall charge requesters who do not fit into any of the categories, fees which recover the full direct cost of searching for and duplicating records, except that the first two hours of search time and the first 100 pages of duplication shall be furnished without charge. Requesters must reasonably describe the records sought. Requests from subjects about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974, which permit fees only for duplication. Activities are reminded that this category of requester may also be eligible for a waiver or reduction of fees if disclosure of the information is in the public interest as defined in paragraph (e)(6)(ii) of this section.

(f) *Aggregating requests.* Except for requests that are for a commercial use, an Activity may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When an Activity reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, the agency may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be reasonable to presume that multiple requests of this type made within a 30-day period had been made to avoid fees. For requests made over a longer period, however, such a presumption becomes harder to sustain and Activities should have a solid basis for determining that aggregation is warranted in such cases. Activities are cautioned that before aggregating requests from more than one requester, they must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may Activities aggregate multiple requests on unrelated subjects from one requester.

(g) *Debt Collection Act of 1982 (Pub. L. 97–365).* The Debt Collection Act provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. Activities may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the requester of the amount owed. The interest rate shall be as prescribed in 31 U.S.C. 3717. Activities should verify the current interest rate with respective Finance and Accounting Offices. After one demand letter has been sent, and 30 calendar days have lapsed with no payment, Activities may submit the debt to respective Finance and Accounting Offices for collection pursuant to the Debt Collection Act.

(h) *Computation of fees.* The fee schedule shall be used to compute the search, review (in the case of commercial requesters) and duplication costs associated with processing a given FOIA request. Costs shall be computed on time actually spent. Neither time-based nor dollar-based minimum charges for search, review and duplication are authorized. The appropriate fee category of the requester shall be applied before computing fees. DD Form 2086 (Record of Freedom of Information (FOI) Processing Cost) will be used to annotate fees for processing FOIA information.

(i) *Refunds.* In the event that an Activity discovers that it has overcharged a requester or a requester has overpaid, the Activity shall promptly refund the charge to the requester by reimbursement methods that are agreeable to the requester and the Activity.

§ 518.20 Collection of fees and fee rates.

(a) *Collection of fees.* Collection of fees will be made at the time of providing the documents to the requester or recipient when the requester specifically states that the costs involved shall be acceptable or acceptable up to a specified limit that covers the anticipated costs. Collection of fees may not be made in advance unless the requester has failed to pay previously assessed fees within 30 calendar days from the date of the billing by the Activity, or the Activity has determined that the fee will be in excess of $250.

(b) *Search time.*

(1) *Costs for manual searches.*

Type	Grade	Hourly rate ($)
Clerical	E9/GS 8 and below.	20
Professional	01–06/GS 9–GS 15.	44
Executive	07/ST/SL/SES–1 and above.	75
Contractor		44

(2) *Computer search.* Fee assessments for computer search consists of two parts; individual time (hereafter referred to as human time), and machine time.

(i) *Human time.* Human time is all the time spent by humans performing the necessary tasks to prepare the job for a machine to execute the run command. If execution of a run requires monitoring by a human, that human time may be also assessed as computer search. The terms ''programmer/operator'' shall not be limited to the traditional programmers or operators. Rather, the terms shall be interpreted in their broadest sense to incorporate any human involved in performing the computer job (*e.g.* technician, administrative support, operator, programmer, database administrator, or action officer).

(ii) *Machine time.* Machine time involves only direct costs of the Central Processing Unit (CPU), input/output devices, and memory capacity used in the actual computer configuration. Only this CPU rate shall be charged. No other machine related costs shall be charged. In situations where the capability does not exist to calculate CPU time, no machine costs can be passed on to the requester. When CPU calculations are not available, only human time costs shall be assessed to requesters. Should Army Activities lease computers, the services charged by the lesser shall not be passed to the requester under the FOIA.

(c) *Duplication costs.*

Type	Cost per page (cents)
Pre-printed material	.02
Office Copy	.15
Microfiche	.25
Computer copies (tapes, discs or printouts)	([1])

[1]Actual cost of duplicating the tape, disc or printout (includes operator's time and cost of the medium).

(d) *Review time costs (in the case of commercial requesters).*

Type	Grade	Hourly rate ($)
Clerical	E9/GS 8 and below.	20
Professional	01–06/GS 9–GS 15.	44
Executive	07/ST/SL/SES–1 and above.	75
Contractor		44

(e) *Audiovisual documentary materials.* Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality. Army audiovisual materials are referred to as ''visual information.''

(f) *Other records.* Direct search and duplication cost for any record not described above shall be computed in the manner described for audiovisual documentary material.

(g) *Costs for special services.* Complying with requests for special services is at the discretion of the Activities. Neither the FOIA, nor its fee structure cover these kinds of services. Therefore, Activities may recover the costs of special services requested by the requester after agreement has been obtained in writing from the requester to pay for one or more of the following services:

(1) Certifying that records are true copies; and/or

(2) Sending records by special methods such as express mail, etc.

§ 518.21 Collection of fees and fee rates for technical data.

(a) *Fees for technical data.* Technical data, other than technical data that discloses critical technology with military or space application, if required to be released under the FOIA, shall be released after the person requesting such technical data pays all reasonable costs attributed to search, duplication and review of the records to be released. Technical data, as used in this section, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). This term does not include computer software, or data incidental to contract administration, such as financial and/or management information. Army Activities shall retain the amounts received by such a release, and it shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs were incurred in complying with request. All reasonable costs as used in this sense are the full costs to the Federal Government of rendering the service, or fair market value of the service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absence of a known market value, charges shall be based on recovery of full costs to the Federal Government. The full costs shall include all direct and indirect costs to conduct the search and to duplicate the records responsive to the request. This cost is to be differentiated from the direct costs allowable for other types of information released under the FOIA. DD Form 2086–1 will be used to annotate fees for technical data. The form is available through normal publication channels.

(b) *Waiver.* Activities shall waive the payment of costs described in paragraph (a) of this section, which are greater than the costs that would be required for release of this same information if the request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer, or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States. However, Activities may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, which will be refunded upon submission of an offer by the citizen or corporation;

(i) The release of technical data is requested in order to comply with the terms of an international agreement; or,

(ii) The Activity determines that such a waiver is in the interest of the United States.

(c) *Fee rates.*

(1) Costs for a manual search of technical data.

Type	Grade	Hourly rate ($)
Clerical	E9/GS 8 and below.	13.25
Minimum Charge.		8.30

Notes: Professional and Executive (To be established at actual hourly rate prior to search. A minimum charge will be established at ½ hourly rates.

(2) Computer search is based on the total cost of the cpu, input-output devices, and memory capacity of the actual computer configuration. The wage for the computer operator and/or programmer determining how to conduct, and subsequently executing the search will be recorded as part of the computer search.

(d) *Duplication costs for technical data.*

Type	Cost ($)
Aerial photograph, maps, specifications, permits, charts, blueprints, and other technical engineering documents	2.50
Engineering data (microfilm).	
a. Aperture cards	
Silver duplicate negative, per card	.75
When key punched and verified, per card	.85

Type	Cost ($)
Diazo duplicate negative, per card	.65
When key punched and verified, per card	.75
b. 35 mm roll film, per frame	.50
c. 16 mm roll film, per frame	.45
d. Paper prints (engineering drawings), each	1.50
e. Paper reprints of microfilm indices, each	.10

(e) *Review time costs of technical data.*

Type	Grade	Hourly rate ($)
Clerical	E9/GS 8 and below.	13.25
Minimum Charge.		8.30

Notes: Professional and Executive (To be established at actual hourly rate prior to search. A minimum charge will be established at ½ hourly rates.

(f) *Other technical data records.* Charges for any additional services not specifically consistent with Volume 11A of DoD 7000.14–R, shall be made by Activities at the following rates:

Type	Cost ($)
1. Minimum charge for office copy (up to six images)	3.50
2. Each additional image	.10
3. Each typewritten page	3.50
4. Certification and validation with seal, each	5.20
5. Hand-drawn plots and sketches, each hour or fraction thereof	12.00

Subpart G—Reports

§ 518.22 Reports control.

(a) General. (1) The Annual FOIA Report is mandated by the statute and reported on a fiscal year basis. Due to the magnitude of the requested statistics and the need to ensure accuracy of reporting, Army Activities shall track this data as requests are processed. This will also facilitate a quick and accurate compilation of statistics. Army Activities shall forward their report to DA, FOIA/PA Office, no later than October 15 following the fiscal year's close. It may be submitted electronically and via hard copy accompanied by a computer diskette. In turn, DA and DoD will produce a consolidated report for a submission to the Attorney General and ensure that a copy of the consolidated report is placed on the Internet for public access.

(2) Existing Army standards and registered data elements are to be utilized to the greatest extent possible in accordance with the provisions of DoD 8320.1–M, ''Data Administration Procedures.''

(3) The reporting requirement outlined is assigned Report Control Symbol DD–DA&M(A)1365, FOIA Report to Congress.

(b) *Reporting time.* Each DA IDA shall prepare statistics and accumulate paperwork for the preceding fiscal year on those items prescribed for the annual report. The IDAs will follow guidelines below and submit the information to the DA, FOIA/PA Office, on or before the 15th day of each October.

(1) Each reporting activity will submit the information requested on the DD Form 2564,'Annual Report Freedom of Information Act.'' The form is available through normal publication channels.

(2) Each IDA will submit the information requested on the DD Form 2564, excluding items 3, 4, and 9c.

(3) The Judge Advocate General (DAJA) and Chief of Engineers (COE) will submit the information requested on the Form DD 2564, item 9c.

(4) The General Counsel (SAGC) will submit the information requested on the DD Form 2564, items 3 and 4.

(5) The DA, FOIA/PA Office will compile the data submitted in the Army's Annual Report. This report will be submitted to the DoD Office for Freedom of Information and Security Review on or before the 30th day of each November.

§ 518.23 Annual report content.

The current edition of DD Form 2564 shall be used to submit Activity input. Instructions for completion follows:

(a) *ITEM 1 initial request determinations.* Please note that initial PA requests, which are also processed as initial FOIA requests, are reported here.

(1) Total requests processed. Enter the total number of initial FOIA requests responded to (completed) during the fiscal year. This should include pending cases at the end of the prior fiscal year, Total Actions is the sum of Items 1b through 1e, on the DD Form 2564. This total may exceed Total Requests Processed.

(2) *Granted in full.* Enter the total number of initial FOIA requests responded to that were granted in full during the fiscal year. (This may include requests granted by your office, yet still requiring action by another office).

(3) *Denied in part.* Enter the total number of initial FOIA requests responded to and denied in part based on one or more of the FOIA exemptions. (Do not report ''Other Reason Responses'' as a partial denial here, unless a FOIA exemption is also used).

(4) *Denied in full.* Enter the total number of initial FOIA requests responded to and denied in full based on one or more of the FOIA exemptions. (Do not report ''Other Reason Responses'' as denials here, unless a FOIA exemption is also used).

(5) *''Other reason'' responses.* Enter the total number of initial FOIA requests in which you were unable to provide all or part of the requested information based on an ''Other Reason'' response.

(6) *Total actions.* Enter the total number of FOIA actions taken during the fiscal year. This number will be the sum of items 1b, through 1e. Total Actions must be equal to or greater than the number of Total Requests Processed.

(b) *ITEM 2 initial request exemptions and other reasons.* (1) *Exemptions invoked on initial request determinations.* Enter the number of times an exemption was claimed for each request that was denied in full or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal to or greater than the sum of paragraphs (a)(3) and (4), of this section. The (b)(7) exemption is reported by subcategories (A) through (F): (A) Interfere with Enforcement; (B) Fair Trial Right; (C) Invasion of Privacy; (D) Protect Confidential Source; (E) Disclose Techniques, and (F) Endanger Life or Safety.

(2) *''Other reasons'' cited on initial determinations.* Identify the ''Other Reason'' response cited when responding to a FOIA request and enter the number of times each was claimed.

(i) *No records.* Enter the number of times a reasonable search of files failed to identify records responsive to subject request.

(ii) *Referrals.* Enter the number of times a request was referred to another DoD Component or Federal Agency for action.

(iii) *Request withdrawn.* Enter the number of times a request and/or appeal was withdrawn by a requester.

(iv) *Fee-related reason.* Requester is unwilling to pay the fees associated with a request; the requester is past due in the payment of fees from a previous FOIA request; or the requester disagrees with a fee estimate.

(v) *Records not reasonably described.* Enter the number of times a FOIA request could not be acted upon since the record had not been described with sufficient particularity to enable the Army Activity to locate it by conducting a reasonable search.

(vi) *Not a proper FOIA request for some other reason.* Enter the number of times the requester has failed unreasonably to comply with procedural requirements, other than fee-

related imposed by this part or an Army Activity's supplementing regulation.

(vii) *Not an agency record.* Enter the number of times a requester was provided a response indicating the requested information was not a record within the meaning of the FOIA and this part.

(viii) *Duplicate request.* Record number of duplicate requests closed for that reason (*e.g.*, request for the same information by the same requester). This includes identical requests received via different means (*e.g.*, electronic mail, facsimile, mail, and courier) at the same or different times.

(ix) *Other (Specify).* Any other reason a requester does not comply with published rules, other than those reasons outlined in paragraphs (b) (2) (i) through (viii) of this section.

(x) *Total.* Enter the sum of paragraphs (b) (2) (i) through (ix) of this section, in the block provided on the form (total other reasons). This number will be equal to or greater than the number in item 1e on the report form, since more than one reason may be claimed for each ''Other Reason'' response.

(3) *(b)(3) Statutes invoked on initial determinations.* Identify the number of times you have used a specific statute to support each (b)(3) exemption. List the statutes used to support each (b)(3) exemption; the number of instances in which the statute was cited; note whether or not the statute has been upheld in a court hearing; and provide a concise description of the material withheld in each individual case by the statute's use. Ensure you cite the specific sections of the acts invoked. The total number of instances reported will be equal to or greater than the total number of (b)(3) exemptions listed in Item 2a on the report form.

(c) *ITEM 3 appeal determinations.* Please note that PA appeals, which are also processed as FOIA appeals, are reported here.

(i) *Total appeal responses.* Enter the total number of FOIA appeals responded to (completed) during the fiscal year.

(ii) *Granted in full.* Enter the total number of FOIA appeals responded to and granted in full during the year.

(iii) *Denied in part.* Enter the total number of FOIA appeals responded to and denied in part based on one or more of the FOIA exemptions. (Do not report ''Other Reason Responses'' as a partial denial here, unless a FOIA exemption is used also.)

(iv) *Denied in full.* Enter the total number of FOIA appeals responded to and denied in full based on one or more of the FOIA exemptions. (Do not report ''Other Reason Responses'' as denials here, unless a FOIA exemption is used also).

(v) *''Other reason'' responses.* Enter the total number of FOIA appeals in which you were unable to provide the requested information based on an ''Other Reason'' response.

(vi) *Total actions.* Enter the total number of FOIA appeal actions taken during the fiscal year. This number will be the sum of items 3b, through 3e, and should be equal to or greater than the number of Total Appeal Responses, item 3a on the report form.

(d) *ITEM 4 Appeal exemptions and other reasons.* (1) *Exemptions Invoked on Appeal Determinations.* Enter the number of times an exemption was claimed for each appeal that was denied in full or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal to or greater than the sum of items 3c, and 3d on the report form. Note that the (b)(7) exemption is reported by subcategory (A) through (F): (A) Interfere with Enforcement; (B) Fair Trial Right; (C) Invasion of Privacy; (D) Protect Confidential Source; (E) Disclose Techniques, and (F) Endanger Life or Safety.

(2) *''Other reasons'' cited on appeal determinations.* Identify the ''Other Reason'' response cited when responding to a FOIA appeal and enter the number of times each was claimed. This number may be equal to or possibly greater than the number in item 3e on the report form, since more than one reason may be claimed for each ''Other Reason'' response.

(3) *(b)(3) Statutes invoked on appeal determinations.* Identify the number of times a specific statute has been used to support each (b)(3) exemption identified in item 4a on the report form DD 2564. List the statutes used to support each (b)(3) exemption; the number of instances in which the statute was cited; note whether or not the statute has been upheld in a court hearing; and provide a concise description of the material withheld in each individual case by the statute's use. Ensure citation to the specific sections of the statute invoked. The total number of instances reported will be equal to or greater than the total number of (b)(3) exemptions listed in Item 4a on the report form.

(e) *ITEM 5 Number and median age of initial cases pending:*

(1) *Total initial cases pending:*

(i) *Beginning and ending report period:* Midnight, 2400 hours, September 30,of the Preceding Year -or- 0001 hours, October 1,is the beginning of the report period. Midnight, 2400 hours, is the close of the reporting period.

(ii) The number for the beginning report period must be the same number reported as of the end of the report period from the previous report.

(2) *Median age of initial requests pending:* Report the median age in days (including holidays and weekends) of initial requests pending.

(3) *Examples of median calculation.* (i) If given five cases aged 10, 25, 35, 65, and 100 days from date of receipt as of the previous September 30th, the total requests pending is five (5). The median age (days) of open requests is the middle, not average value, in this set of numbers (10, 25, 35, 65, and 100), 35 (the middle value in the set).

(ii) If given six pending cases, aged 10, 20, 30, 50, 120, and 200 days from date of receipt, as of the previous September 30th, the total requests pending is six (6). The median age (days) of open requests 40 days (the mean [average] of the two middle numbers in the set, in this case the average of middle values 30 and 50).

(4) *Accuracy of calculations.* Activities must ensure the accuracy of calculations. As backup, the raw data used to perform calculations should be recorded and preserved. This will enable recalculation of median [and mean values] as necessary. Activities may require subordinate elements to forward raw data, as deemed necessary and appropriate.

(5) *Average.* If an Activity believes that ''average'' (mean) processing time is a better measure of performance, then report ''averages'' (means) as well as median values (*e.g.*, with data reflected and plainly labeled on plain bond as an attachment to the report). However, ''average'' (mean) values will not be included in the consolidated Army report unless all Activities report it.

(f) *ITEM 6 number of initial requests received during the fiscal year.* Enter the total number of initial FOIA requests received during the reporting period (fiscal year being reported).

(g) *ITEM 7 types of requests processed and median age.* Information is reported for three types of initial requests completed during the reporting period: Simple; Complex; and Expedited Processing. The following items of information are reported for these requests:

(1) *Total number of initial requests.* Enter the total number of initial requests processed [completed] during the reporting period (fiscal year) by type (Simple, Complex and Expedited Processing) in the appropriate row on the form.

(2) *Median age (Days).* Enter the median number of days [calendar days including holidays and weekends] required to process each type of case (Simple, Complex and Expedited Processing) during the period in the appropriate row on the form.

(3) *Example.* Given seven initial requests, multitrack—simple completed during the fiscal year, aged 10, 25, 35, 65, 79, 90 and 400 days when completed. The total number of requests completed was seven (7). The median age (days) of completed requests is 65, the middle value in the set.

(h) *ITEM 8 Fees collected from the public.* Enter the total amount of fees collected from the public during the fiscal year. This includes search, review and reproduction costs only.

(i) *ITEM 9 FOIA program costs.* (1) *Number of full time staff.* Enter the number of personnel your agency had dedicated to working FOIA full time during the fiscal year. This will be expressed in work-years [man-years]. For example: ''5.1, 3.2, 1.0, 6.5, *et al.*''

TABLE 7–1.—SAMPLE COMPUTATION OF WORK YEARS FOR FULL TIME STAFF

Employee	Number of months worked	Work-years	Note
Smith, Jane	6	.5	Hired full time at middle of fiscal year.
Public, John Q.	4	.34	Dedicated to full time FOIA processing last quarter of the fiscal year.
Brown, Tom	12	1.0	Worked FOIA full time all fiscal year.
Totals	22	1.84	

(2) *Number of part time staff.* Enter the number of personnel your agency had dedicated to working FOIA part time during the fiscal year. This will be expressed in work-years [man-years]. For example: ''5.1, 3.2, 1.0, 6.5, *et al.*''

TABLE 7–2.—COMPUTATION OF WORK YEARS FOR PART TIME STAFF

Employee	Number of months worked	Work-years	Note
Public, John Q.	200	.1	Amount of time devoted to part time FOIA processing before becoming full time FOIA processor in previous example.
White, Sally	400	.2	Processed FOIAs part time while working as paralegal in General Counsel's Office.
Peters, Ron	1,000	.5	Part time employee dedicated to FOIA processing.
Totals	*1,600/2,000		

*(hours worked in a year) equals 0.8 work-years.

(3) *Estimated Litigation Cost.* Report your best estimate of litigation costs for the FY. Include all direct and indirect expenses associated with FOIA litigation in U.S. District Courts, U.S. Circuit Courts of Appeals, and the U.S. Supreme Court.

(4) *Total Program Cost.* Report the total cost of FOIA program operation within your agency. Include your litigation costs in this total. While you do not have to report detailed cost information as in the past, you should be able to explain the techniques by which you derived your agency's total cost figures if the need arises.

(i) Before the close of each fiscal year, the DoD OFOISR will dispatch the latest OSD Composite Rate Chart for military personnel to DoD Components. This information may be used in computing military personnel costs.

(ii) Army Activities should compute their civilian personnel costs using rates from local Office of Personnel Management (OPM) Salary Tables and shall add 16% for benefits.

(iii) Data captured on DD Form 2086, and DD Form 2086–1, shall be summarized and used in computing total costs.

(iv) An overhead rate of 25% shall be added to all calculated costs for supervision, space, and administrative support.

(j) *ITEM 10 authentication.* The official that approves the agency's report submission to DA will sign and date; enter typed name and duty title; and provide both the agency's name and phone number for questions about the report. The consolidated Annual FOIA Report will be made available to the public in electronic format by DoD.

Appendix A to Part 518—References

(a) References.

(1) AR 1–20 Legislative Liaison;

(2) AR 20–1 Inspector General Activities and Procedures;

(3) AR 25–1 The Army Information Management;

(4) AR 25–11 Record Communications and the Privacy Communications System;

(5) AR 25–400–2 The Army Records Information Management System (ARIMS);

(6) AR 27–20 Claims;

(7) AR 36–2 Audit Reports and Follow-up;

(8) AR 40–66 Medical Record Administration and Health Care Documentation;

(9) AR 40–68 Quality Assurance Administration;

(10) AR 40–400 Patient Administration;

(11) AR 195–2 Criminal Investigation Activities;

(12) AR 25–71 The Army Privacy Program;

(13) AR 360–1 The Army Public Affairs Program;

(14) AR 380–5 Department of the Army Information Security Program;

(15) AR 381–10 U.S. Army Intelligence Activities;

(16) AR 381–12 Subversion and Espionage Directed Against The U.S. Army (SAEDA);

(17) AR 381–20 The Army Counterintelligence Program;

(18) AR 530–1 Operations Security (OPSEC);

(19) AR 600–85 Army Substance Abuse Program; and

(20) AR 608–18 The Army Family Advocacy Program.

(b) Related publications. A related publication is merely a source of additional information. The user does not have to read it to understand this part.

(1) AR 10–5 Headquarters, Department of the Army;

(2) AR 27–10 Military Justice;

(3) AR 27–40 Litigation;
(4) AR 27–60 Intellectual Property;
(5) AR 60–20 Army and Air Force Exchange Service Operating Policies AFR 147–14;
(6) AR 70–31 Standards for Technical Reporting;
(7) AR 190–45 Law Enforcement Reporting;
(8) AR 380–10 Foreign Disclosure and Contacts with Foreign Representatives;
(9) AR 381–45 Investigative Records Repository;
(10) AR 385–40 Accident Reporting and Records;
(11) DA Pam 25–30 Consolidated Army Publications and Index Forms;
(12) DA Pam 25–51 The Army Privacy Program—System of Records Notices and Exemption Rules;
(13) DoD Directive 5100.3 Support of the Headquarters of Combatant and Subordinate Joint Commands, November 15, 1999;
(14) DoD Directive 5230.24 Distribution Statements on Technical Documents, March 18, 1987;
(15) DoD Directive 5230.25 Withholding of Unclassified Technical Data From Public Disclosure, November 6, 1984;
(16) DoD Directive 5230.9 Clearance of DoD Information for Public Release, April 9, 1996;
(17) DoD Directive 5400.4 Provision of Information to Congress, January 30, 1978;
(18) DoD Directive 5400.7 DoD Freedom of Information Act (FOIA) Program, September 29, 1997;
(19) DoD Directive 5400.11 DOD Privacy Program, December 13, 1999;
(20) DoD Directive 7650.1 General Accounting Office (GAO) and Comptroller General Access to Records, September 11, 1997;
(21) DoD Directive 7650.2 General Accounting Office Reviews and Reports, July 13, 2000;
(22) DoD Directive 8910.1 Management and Control of Information Requirements, June 11, 1993;
(23) DoD Federal Acquisition Regulation Supplement (DFARS), Part 227—Patents, Data, and Copyrights, See also 48 CFR part 227;
(24) Department of Defense Financial Management Regulation (Reimbursable Operations, Policy and Procedures) Volume 11A, April 2003 authorized by DoD Instruction 7000.14, DoD Financial Management Policy and Procedures, November 15, 1992;
(25) DoD Instruction 5400.10 OSD Implementation of DoD Freedom of Information Act Program, January 24, 1991;
(26) DoD 5200.1–R Information Security Program, January 1997, authorized by DoD Directive 5200.1, December 13, 1996, DoD Information Security Program;
(27) DoD 5400.7–R DoD Freedom of Information Act Program, September 4, 1998;
(28) DoD 5400.11–R Department of Defense Privacy Program, August 1983, authorized by DoD Directive 5400.11, December 13, 1999, DoD Privacy Program;
(29) Executive Order 12600 Predisclosure Notification Procedures for Confidential Commercial Information, June 23, 1987, 52 FR 23781;
(30) Public Law 86–36 National Security Information Exemption, Codified at 50 U.S.C. 402, as amended;
(31) Public Law 104–191 Health Insurance Portability and Accountability Act of 1996, Codified at 42 U.S.C. 1171–1179, as amended;
(32) Section 822 of the National Defense Authorization Act for FY 90 and 91 (Pub. L. 101–189, November 29, 1989: 103 Stat. 1382, 1503);
(33) 5 U.S.C. 551–559, Administrative Procedures Act;
(34) 5 U.S.C. 552, as amended: public information; agency rules, opinions, orders, records, and proceedings. (FOIA);
(35) 5 U.S.C. 552a, as amended: records about individuals, (PA of 1974);
(36) 10 U.S.C. 128, Physical Protection of Special Nuclear Material: Limitation on Dissemination of Unclassified Information;
(37) 10 U.S.C. 130, Authority to Withhold from Public Disclosure Certain Technical Data;
(38) 10 U.S.C. 130 (b), Personnel in Overseas, Sensitive, or Routinely Deployable Units: nondisclosure of personally identifying information;
(39) 10 U.S.C. 1102 (f), Confidentiality of Medical Quality Assurance Records: Qualified Immunity for Participants;
(40) 10 U.S.C. 2305(g) Prohibition on Release of Contractor Proposals;
(41) 10 U.S.C. 2320–2321, Rights in Technical Data;
(42) 10 U.S.C. 2328, Release of Technical Data under Freedom of Information Act: Recovery of Costs;
(43) 17 U.S.C. 106, Exclusive Rights in Copyrighted Works;
(44) 18 U.S.C. 798, Disclosure of Classified Information;
(45) 18 U.S.C. 3500, The Demands for Production of Statements and Reports of Witnesses (The Jencks Act);
(46) 31 U.S.C. 3717, Interest and Penalty on Claims;
(47) 32 CFR Part 518, The Army FOIA Program;
(48) 35 U.S.C. 181–188, Secrecy of Certain Inventions and Filing of Application in Foreign Country;
(49) 41 U.S.C. 423, Restrictions on Disclosing and Obtaining Contractor Bid or Proposal Information or Source Selection Information;
(50) 42 U.S.C. 2162, Classification and Declassification of Restricted Data;
(51) 44 U.S.C. 3301–3324, Disposal of Records;
(52) 45 CFR Part 164, Security and Privacy of Individually Identifiable Health Information; and
(53) 50 U.S.C. 403–3, War and National Defense, Protection of Intelligence Sources and Methods.

Appendix B to Part 518—Addressing FOIA Requests

(a) General. Army records may be requested from those Army officials who are listed in 32 CFR Part 518 (see appendix A of this part). Contact the DA FOIA/PA Office, to coordinate the referral of requests if there is uncertainty as to which Army activity may have the records. Send requests to particular installations or organizations as follows:

(1) Current publications and records of DA field commands, installations, and organizations. See also: http://books.army.mil/.

(2) Send the request to the commander of the command, installation, or organization, to the attention of the FOIA Official.

(3) Consult AR 25–400–2 (ARIMS) for more detailed listings of all record categories kept in DA offices.

(4) Contact the installation or organization public affairs officer for help if you cannot determine the official within a specific organization to whom your request should be addressed.

(b) Department of the Army publications. Send requests for current administrative, training, technical, and supply publications to the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. NTIS handles general public requests for unclassified, uncopyrighted, and nondistribution-restricted Army publications not sold through the Superintendent of Documents.

(c) Military personnel records. Send requests for military personnel records of information as follows:

(1) Army Reserve personnel not on active duty and retired personnel—Commander, U.S. Army Human Resources Command, St. Louis, 1 Reserve Way, St. Louis, MO 63132–5200; commercial.

(2) Army officer personnel discharged or deceased after July 1, 1917 and Army enlisted personnel discharged or deceased after November 1, 1912—Director, National Personnel Records Center, 9700 Page Ave., St. Louis, MO 63132–5100.

(3) Army personnel separated before the dates specified in paragraph (2), above—Old Military and Civilian Records Unit (Archives 1), National Archives and Records Administration, Washington, DC 20408–0001.

(4) Army National Guard officer personnel—Chief, National Guard Bureau. Army National Guard enlisted personnel—Adjutant General of the proper State.

(5) Active duty commissioned and warrant officer personnel—Commander, U.S. Army Human Resources Command, ATTN: AHRC–FOI, Alexandria, VA 22332–0404; commercial. Active duty enlisted personnel—Commander, U.S. Army Enlisted Records and Evaluation Center, ATTN: PCRE–RP, 8899 East 56th Street, Indianapolis, IN 46249–5301; commercial.

(d) Medical records. (1) Medical records of non-active duty military personnel. Use the same addresses as for military personnel records.

(2) Medical records of military personnel on active duty. Address the medical treatment facility where the records are kept. If necessary request locator service.

(3) Medical records of civilian employees and all dependents. Address the medical treatment facility where the records are kept. If the records have been retired, send requests to the Director, National Personnel Records Center, Civilian Records Facility, 111 Winnebago St., St. Louis, MO 63118–4199.

(e) Legal records. (1) Records of general courts-martial and special courts-martial in

which bad conduct discharge was approved. For cases not yet forwarded for appellate review, apply to the staff judge advocate of the command having jurisdiction over the case. For cases forwarded for appellate review and for old cases, apply to the U. S. Army Legal Services Agency, ATTN: JALS–CCO, 901 North Stuart Street, Arlington, VA 22203.

(2) Records of special courts-martial not involving a bad conduct discharge. These records are kept for 10 years after completion of the case. If the case was completed within the past three years, apply to the staff judge advocate of the headquarters where it was reviewed. If the case was completed from 3 to 10 years ago, apply to the National Personnel Records Center (Military Records), 9700 Page Ave., St. Louis, MO 63132–5100. If the case was completed more than 10 years ago, the only evidence of conviction is the special courts-martial order in the person's permanent records.

(3) Records of summary courts-martial. Locally maintained records are retired 3 years after action of the supervisory authority. Request records of cases less than 3 years old from the staff judge advocate of the headquarters where the case was reviewed. After 10 years, the only evidence of conviction is the summary courts-martial order in the person's permanent records.

(4) Requests submitted under paragraphs (e) (2), and (3), of this appendix. These requests will be processed in accordance with Subpart E of this part. The IDA is The Judge Advocate General, HQDA (DAJA–CL), Washington DC 20310–2200.

(5) Administrative settlement of claims. Apply to the Chief, U.S. Army Claims Service, ATTN: JACS–TC, Building 4411, Llewellyn Avenue, Fort George G. Meade, MD 20755–5360.

(6) Records involving debarred or suspended contractors. Apply to U.S. Army Legal Services Agency (JALS–PF), 901 North Stewart Street, Arlington, VA 22203.

(7) Records of all other legal matters (other than records kept by a command, installation, or organization staff judge advocate). Apply to HQDA (DAJA–AL), Washington D.C. 20310–2200.

(f) Civil works program records. Civil works records include those relating to construction, operation, and maintenance for the improvement of rivers, harbors, and waterways for navigation, flood control, and related purposes, including shore protection work by the Army. Apply to the proper division or district office of the Corps of Engineers. If necessary to determine the proper office, contact the Commander, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, ATTN: CECC–K, Washington DC 20314–1000.

(g) Civilian personnel records. Send requests for personnel records of current civilian employees to the employing installation. Send requests for personnel records of former civilian employees to the Director, National Personnel Records Center, Civilian Records Facility, 111 Winnebago St., St. Louis, MO 63118–4199.

(h) Procurement records. Send requests for information about procurement activities to the contracting officer concerned or, if not feasible, to the procuring activity. If the contracting officer or procuring activity is not known, send inquiries as follows:

(1) Army Materiel Command procurement: Commander, U.S. Army Materiel Command, ATTN: AMCID–F, 5001 Eisenhower Ave., Alexandria, VA 22333–0001.

(2) Corps of Engineers procurement: Commander, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, ATTN: CECC–K, WASH DC 20314–1000.

(3) All other procurement: HQDA (DAJA–KL), 2200 Army Pentagon, Washington, D.C. 20310–2200.

(i) Criminal investigation files. Send requests involving criminal investigation files to the Commander, U.S. Army Criminal Investigation Command, ATTN: CICR–FP, 6010 6th St., Bldg. #1465, Ft. Belvoir, VA 22060–5585. Only the Commanding General, USACIDC, can release any USACIDC-originated criminal investigation file.

(j) Personnel security investigation files and general Army intelligence records. Send requests for personnel security investigation files, intelligence investigation and security records, and records of other Army intelligence matters to the Commander, U.S. Army Intelligence and Security Command, ATTN: IAMG–CIC–FOI/PO, 4552 Pike Road, Fort George G. Meade, MD 20755–5995.

(k) Inspector General records. Send requests involving records within the Inspector General system to HQDA (SAIG–ZXL), 1700 Army Pentagon, Washington, DC 20310–1700. AR 20–1 governs such records.

(l) Army records in Government records depositories. Non-current Army records are in the National Archives of the United States, Washington, DC 20408–0001; in Federal Records Centers of NARA; and in other records depositories. Requesters must write directly to the heads of these depositories for copies of such records. A list of pertinent records depositories is published in AR 25–400–2, table 10–1.

[FR Doc. 04–27848 Filed 12–27–04; 8:45 am]

BILLING CODE 3710–08–U

Federal Register

Tuesday,
December 28, 2004

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1, Parts 5, 6, et al. Federal Acquisition Circular 2001–27; Introduction, Free Trade Agreements—Australia and Morocco; Small Entity Compliance Guide; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001–27; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of interim rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–27. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.acqnet.gov/far.*

DATES: For effective date and comment date, see separate document which follows.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to the FAR case. Please cite FAC 2001–27, FAR case 2004–027. Interested parties may also visit our Web site at *http://www.acqnet.gov/far.*

Item	Subject	FAR case	Analyst
I	Free Trade Agreements—Australia and Morocco	2004–027	Davis.

SUPPLEMENTARY INFORMATION: A summary of the FAR rule follows. For the actual revisions and/or amendments to this FAR case, refer to the specific item number and subject set forth in the document following this item summary.

FAC 2001–27 amends the FAR as specified below:

Free Trade Agreements—Australia and Morocco (FAR case 2004–027)

This interim rule allows contracting officers to purchase the products of Australia and Morocco without application of the Buy American Act if the acquisition is subject to the Free Trade Agreements. The U.S. Trade Representative negotiated Free Trade Agreements with Australia and Morocco, which go into effect January 1, 2005, according to Public Laws 108–286 and 108–302. These Agreements join the North American Free Trade Agreement (NAFTA) and the Chile and Singapore Free Trade Agreements which are already in the FAR. The threshold for applicability of the Australian Free Trade Agreement is $58,550 (the same as other Free Trade Agreements to date), but the threshold for applicability of the Morocco Free Trade Agreement is $175,000. Because of the short statutory time frame, this is an interim rule. Also in this rule are changes requested by the U.S. Trade Representative, in the list of Least Developed Countries, and changes in terminology on how the FAR uses the terms ''designated country'' and ''Trade Agreements Act.'' Some technical changes are also included.

Dated: December 22, 2004.

Laura Auletta,

Director, Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–27 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–27 is effective January 1, 2005.

Dated: December 21, 2004.

Lt. Col. Vincent Feck,

Deputy Director (Operations), Defense Procurement and Acquisition Policy.

Dated: December 22, 2004.

David A. Drabkin,

Senior Procurement Executive, General Services Administration.

Dated: December 21, 2004.

Scott Thompson,

Acting Deputy Chief Acquisition Officer, National Aeronautics and Space Administration.

[FR Doc. 04–28399 Filed 12–27–04; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 6, 9, 12, 14, 17, 22, 25, and 52

[FAC 2001–27; FAR Case 2004–027]

RIN 9000–AK09

Federal Acquisition Regulation; Free Trade Agreements—Australia and Morocco

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement new Free Trade Agreements with Australia and Morocco as approved by Congress (Public Laws 108–286 and 108–302). These Free Trade Agreements are scheduled to go into effect January 1, 2005.

The interim rule also establishes a table of services excluded from the coverage of the various trade agreements, corrects the threshold for Canadian services, revises the list of Least Developed Countries, revises FAR terminology relating to international trade agreements and the Trade Agreements Act (TAA), and revises the FAR clauses that implement application of the Buy American Act (41 U.S.C. 10a, 10b, 10b–1, and 10c) and trade agreements to construction material.

DATES: *Effective Date:* January 1, 2005.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before February 28, 2005, to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2001–27, FAR case 2004–027, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Agency Web site: *http://www.acqnet.gov/far/ProposedRules/*

proposed.htm. Click on the FAR case number to submit comments.

• E-mail: *farcase.2004–027@gsa.gov.* Include FAC 2001–27, FAR case 2004–027, in the subject line of the message.

• Fax: (202) 501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2001–27, FAR case 2004–027, in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–27, FAR case 2004–027.

SUPPLEMENTARY INFORMATION:

A. Background

New Free Trade Agreements. This rule amends FAR Part 25 and the clauses at 52.212–3, Offeror Representations and Certifications—Commercial Items, 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders— Commercial Items, 52.225–3, Buy American Act—Free Trade Agreements—Israeli Trade Act, 52.225–4, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, 52.225–5, Trade Agreements, 52.225–6, Trade Agreements Certificate, 52.225–9, Buy American Act—Construction Materials, and 52.225–11, Buy American Act—Construction Materials under Trade Agreements, and 52.225–12, Notice of Buy American Act Requirement—Construction Materials under Trade Agreements, to implement new Free Trade Agreements with Australia and Morocco, as approved by Congress (Public Laws 108–286 and 108–302). The Free Trade Agreements with Australia and Morocco waive the applicability of the Buy American Act for some foreign supplies and construction materials from Australia and Morocco, and specify procurement procedures designed to ensure fairness, applicable to the acquisition of supplies and services.

Other related revisions.

• *Table of excluded services.* The rule includes a table of excluded services to improve clarity.

• *NAFTA threshold for Canadian services.* The rule corrects the NAFTA threshold for services from Canada from $25,000 to $58,550 (FAR 25.402(b)).

• *Terminology.*

1. The TAA and the WTO Agreement on Government Procurement. The FAR currently equates the term ''Trade Agreements Act'' with the Agreement on Government Procurement (meaning the World Trade Organization Government Procurement Agreement (''WTO GPA'') (see FAR 25.400(a)(1)). The Trade Agreements Act (19 U.S.C. 2501 *et seq.*) (TAA) is not synonymous with the WTO GPA. The TAA provides authority for the President (designated by Executive Order 12260 of December 31, 1980 to the United States Trade Representative (USTR)) to waive discriminatory purchasing requirements (such as the Buy American Act), designate eligible countries (including least developed countries), and bar procurement from non-designated countries. It does not contain thresholds or the terms of the various trade agreements. The rule substitutes the term ''World Trade Organization Government Procurement Agreement'' in all places in the FAR where the term ''Trade Agreements Act'' is currently used to mean the WTO GPA.

2. ''Designated country,'' ''WTO GPA country,'' and ''least developed country.'' The list of designated countries at FAR 25.001 is currently a combination of WTO members subject to the WTO GPA (WTO GPA countries) and certain least developed countries for which the USTR has waived discriminatory purchasing requirements, in accordance with section 301 of the TAA. The rule redefines ''designated country'' to include WTO GPA countries, Free Trade Agreement countries, least developed countries, and Caribbean Basin countries. Free Trade Agreement countries and Caribbean Basin countries are now also designated countries. Each of these terms will retain a separate definition, because in some instances, the regulation does not apply to all designated countries, but only some of the specific subsets.

• *FAR clauses that implement application of the Buy American Act and trade agreements to construction material.*

1. Caribbean Basin construction material. The **Federal Register** notices issued by the USTR under the Caribbean Basin Trade Initiative state that ''products'' of the listed Caribbean Basin countries shall continue to be treated as ''eligible products'' (unless excluded from duty-free treatment under 19 U.S.C. 2703(b)). To be consistent with the statutory definition at 19 U.S.C. 2518(4), this rule modifies the definition of ''eligible product'' to include ''construction material'' and modifies the construction clauses that implement the trade agreements to extend nondiscriminatory treatment to all designated country construction material, including Caribbean Basin country construction material.

2. Cost of components. The rule makes a technical correction to the definition of ''cost of components'' as contained in the clauses that apply Buy American Act and trade agreements to construction material (52.225–9, Buy American Act—Construction Materials, and 52.225–11, Buy American Act—Construction Materials under Trade Agreements). When applied to components of construction material, the definition must be modified in the second paragraph to delete the term ''end product'' and replace it with the term ''construction material.'' Note that the definition of the term ''component'' in these clauses has already been so modified.

• *Revising the list of Least Developed Countries.* The U.S. Trade Representative has requested that the list of Least Developed Countries (LDC) be revised. These countries are included within the definition of ''designated country''. This list has been approved by the Trade Policy Staff Committee. The TAA allows USTR (pursuant to authority delegated from the President in Executive Order 12260) to waive the purchasing prohibition and discriminatory purchasing requirements for LDCs. As defined in 19 U.S.C. 2518, a ''least developed country'' is ''any country on the United Nations General Assembly list of least developed countries.'' The countries designated as eligible countries under the TAA are listed in the FAR to inform contracting officers of countries that are eligible to participate in Federal Government procurement. Botswana is no longer designated as an LDC by the United Nations. Further, the following countries have been designated as LDCs by the United Nations, but are not currently included in the FAR list: Afghanistan; Angola; Burma (Myanmar); Cambodia; Democratic Republic of Congo; Eritrea; Ethiopia; Laos; Liberia; Madagascar; Mauritania; Senegal; Solomon Islands; Sudan; East Timor; and Zambia. Therefore, the USTR has removed Botswana and included the additional LDCs, with the exceptions of Burma (Myanmar), Liberia and Sudan, which are subject to United States economic sanctions.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and

Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Although the rule opens up Government procurement to the products of Australia and Morocco and Caribbean Basin country construction material, the Councils do not anticipate any significant economic impact on U.S. small businesses. The Department of Defense only applies the trade agreements to the non-defense items listed at DFARS 225.401–70, and acquisitions that are set aside for small businesses are exempt. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 5, 6, 9, 12, 14, 17, 22, 25, and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2001–27, FAR case 2004–027), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the provisions at FAR 52.212–3, 52.225–4, 52.225–6, and 52.225–11 regarding the paperwork burdens previously approved under OMB Control Numbers 9000–0130, 9000–0025, and 9000–0141. The impact is negligible.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the Free Trade Agreements with Australia and Morocco, as approved by Congress (Public Laws 108–286 and 108–302), are scheduled to go into effect January 1, 2005. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 5, 6, 9, 12, 14, 17, 22, 25, and 52

Government procurement.

Dated: December 22, 2004.

Laura Auletta,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 5, 6, 9, 12, 14, 17, 22, 25, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 5, 6, 9, 12, 14, 17, 22, 25, and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

■ 2. Amend section 5.202 by revising paragraph (a)(12) to read as follows:

5.202 Exceptions.

* * * * *

(a) * * *

(12) The proposed contract action is by a Defense agency and the proposed contract action will be made and performed outside the United States and its outlying areas, and only local sources will be solicited. This exception does not apply to proposed contract actions covered by the World Trade Organization Government Procurement Agreement or a Free Trade Agreement (see Subpart 25.4);

* * * * *

5.203 [Amended]

■ 3. Amend section 5.203 in the first sentence of paragraph (h) by removing ''subject to the Trade Agreements Act'' and adding ''covered by the World Trade Organization Government Procurement Agreement'' in its place.

■ 4. Amend section 5.301 by revising paragraph (a)(1); and removing from paragraph (c) ''subject to the Trade Agreements Act,'' and adding ''covered by the World Trade Organization Government Procurement Agreement or a Free Trade Agreement,'' in its place. The revised text reads as follows:

5.301 General.

(a) * * *

(1) Covered by the World Trade Organization Government Procurement Agreement or a Free Trade Agreement (see Subpart 25.4); or

* * * * *

PART 6—COMPETITION REQUIREMENTS

6.303–1 [Amended]

■ 5. Amend section 6.303–1 by removing paragraph (d) and redesignating paragraph (e) as paragraph (d).

PART 9—CONTRACTOR QUALIFICATIONS

■ 6. Amend section 9.205 by revising paragraph (b) to read as follows:

9.205 Opportunity for qualification before award.

* * * * *

(b) The activity responsible for establishing a qualification requirement must keep any list maintained of those already qualified open for inclusion of additional products, manufacturers, or other potential sources.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.205 [Amended]

■ 7. Amend section 12.205 by removing from paragraph (c) ''subject to the Trade Agreements Act'' and adding ''covered by the World Trade Organization Government Procurement Agreement'' in its place.

PART 14—SEALED BIDDING

■ 8. Amend section 14.409–1 by revising the introductory text of paragraph (a)(2) to read as follows:

14.409–1 Award of unclassified contracts.

(a)(1) * * *

(2) For acquisitions covered by the World Trade Organization Government Procurement Agreement or a Free Trade Agreement (see 25.408(a)(5)), agencies must include in notices given unsuccessful bidders from World Trade Organization Government Procurement Agreement or Free Trade Agreement countries—

* * * * *

PART 17—SPECIAL CONTRACTING METHODS

■ 9. Amend section 17.203 by revising paragraph (h) to read as follows:

17.203 Solicitations.

* * * * *

(h) Include the value of options in determining if the acquisition will exceed the World Trade Organization Government Procurement Agreement or Free Trade Agreement thresholds.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.1503 [Amended]

■ 10. Amend section 22.1503 by removing from the end of paragraph (b)(4) ''(see 25.403(b))'' and adding ''(see 25.402(b))'' in its place.

PART 25—FOREIGN ACQUISITION

■ 11. Amend section 25.003 by revising the definitions ''Designated country'', ''Designated country end product'', ''Eligible product'', and ''Free Trade Agreement country''; and adding the definitions ''Least developed country'', ''Least developed country end product'', ''World Trade Organization Government Procurement Agreement (WTO GPA) country'', and ''WTO GPA country end product'' to read as follows:

25.003 Definitions.

* * * * *

Designated country means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);

(2) A Free Trade Agreement country (Australia, Canada, Chile, Mexico, Morocco, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

Designated country end product means a WTO GPA country end product, an FTA country end product, a least developed country end product, or a Caribbean Basin country end product.

* * * * *

Eligible product means a foreign end product, construction material, or service that, due to applicability of a trade agreement to a particular acquisition, is not subject to discriminatory treatment.

* * * * *

Free Trade Agreement country'' means Australia, Canada, Chile, Mexico, Morocco, or Singapore.

* * * * *

Least developed country means any of the following countries: Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia.

Least developed country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

* * * * *

World Trade Organization Government Procurement Agreement (WTO GPA) country means any of the following countries: Aruba, Austria, Belgium, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom.

WTO GPA country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

25.204 [Amended]

■ 12. Amend section 25.204 by removing from paragraph (a) ''excepted under the Trade Agreements Act or'' and adding ''covered by the WTO GPA or a'' in its place.

■ 13. Revise section 25.400 to read as follows:

25.400 Scope of subpart.

(a) This subpart provides policies and procedures applicable to acquisitions that are covered by—

(1) The World Trade Organization Government Procurement Agreement (WTO GPA), as approved by Congress in the Uruguay Round Agreements Act (Pub. L. 103–465);

(2) Free Trade Agreements (FTA), consisting of—

(i) NAFTA (the North American Free Trade Agreement, as approved by Congress in the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 3301 note));

(ii) Chile FTA (the United States-Chile Free Trade Agreement, as approved by Congress in the United States-Chile Free Trade Agreement Implementation Act (Pub. L. 108–77));

(iii) Singapore FTA (the United States-Singapore Free Trade Agreement, as approved by Congress in the United States-Singapore Free Trade Agreement Implementation Act (Pub. L. 108–78));

(iv) Australia FTA (the United States—Australia Free Trade Agreement, as approved by Congress in the United States— Australia Free Trade Agreement Implementation Act (Pub. L. 108–286); and

(v) Morocco FTA (The United States—Morocco Free Trade Agreement, as approved by Congress in the United States— Morocco Free Trade Agreement Implementation Act (Pub. L. 108–302);

(3) The least developed country designation made by the U.S. Trade Representative, pursuant to the Trade Agreements Act (19 U.S.C. 2511(b)(4)), in acquisitions covered by the WTO GPA;

(4) The Caribbean Basin Trade Initiative (CBTI) (determination of the U.S. Trade Representative that end products or construction material granted duty-free entry from countries designated as beneficiaries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, *et seq.*), with the exception of Panama, must be treated as eligible products in acquisitions covered by the WTO GPA);

(5) The Israeli Trade Act (the U.S.-Israel Free Trade Area Agreement, as approved by Congress in the United States-Israel Free Trade Area Implementation Act of 1985 (19 U.S.C. 2112 note)); or

(6) The Agreement on Trade in Civil Aircraft (U.S. Trade Representative waiver of the Buy American Act for signatories of the Agreement on Trade in Civil Aircraft, as implemented in the Trade Agreements Act of 1979 (19 U.S.C. 2513)).

(b) For application of the trade agreements that are unique to individual agencies, see agency regulations.

■ 14. Amend section 25.401 by removing from paragraph (a)(2) ‘‘, including all services purchased in support of military forces located overseas’’; removing from paragraph (a)(5) ‘‘(but see 6.303–1(d))’’; and revising paragraph (b) to read as follows:

25.401 Exceptions.

* * * * *

(b) In the World Trade Organization Government Procurement Agreement (WTO GPA) and each FTA, there is a U.S. schedule that lists services that are excluded from that agreement in acquisitions by the United States. Acquisitions of the following services are excluded from coverage by the U.S. schedule of the WTO GPA or an FTA as indicated in this table:

The service (Federal Service Codes from the Federal Procurement Data System Product/Service Code Manual are indicated in parentheses for some services.)	WTO GPA	NAFTA and Chile FTA	Singapore FTA	Australia and Morocco FTA
(1) All services purchased in support of military services overseas.	X	X	X	X
(2) (i) Automatic data processing (ADP) telecommunications and transmission services (D304), except enhance (*i.e.*, value-added) telecommunications services..	X	X	.....	.....
(ii) ADP teleprocessing and timesharing services (D305), telecommunications network management services (D316), automated news services, data services or other information services (D317), and other ADP and telecommunications services (D399).	X	X	.....	.....
(iii) Basic telecommunications network services (*i.e.*, voice telephone services, packet-switched data transmission services, circuit-switched data transmission services, telex services, telegraph services, facsimile services, and private leased circuit services, but not information services, as defined in 47 U.S.C. 153(20)))..	*	*	X	X
(3) Dredging	X	X	X	X
(4) (i) Operation and management contracts of certain Government or privately owned facilities used for Government purposes, including Federally Funded Research and Development Centers.	X	.....	X	.....
(ii) Operation of all Department of Defense, Department of Energy, or the National Aeronautics and Space Administration facilities; and all Government-owned research and development facilities or Government-owned environmental laboratories.	* *	X	* *	X
(5) Research and development	X	X	X	X
(6) Transportation services (including launching services, but not including travel agent services—V503).	X	X	X	X
(7) Utility services	X	X	X	X
(8) Maintenance, repair, modification, rebuilding and installation of equipment related to ships (J019).	.....	X	.....	X
(9) Nonnuclear ship repair (J998)	.....	X	.....	X

*NOTE 1. Acquisitions of the services listed at (2)(iii) of this table are a subset of the excluded services at (2)(i) and (ii), and are therefore not covered under the WTO GPA.

**NOTE 2. Acquisitions of the services listed at (4)(ii) of this table are a subset of the excluded services at (4)(i), and are therefore not covered under the WTO GPA.

■ 15. Revise section 25.402 to read as follows:

25.402 General.

(a)(1) The Trade Agreements Act (19 U.S.C. 2501, *et seq.*) provides the authority for the President to waive the Buy American Act and other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States, or that meet certain other criteria, such as being a least developed country. The President has delegated this waiver authority to the U.S. Trade Representative. In acquisitions covered by the WTO GPA, Free Trade Agreements, or the Israeli Trade Act, the USTR has waived the Buy American Act and other discriminatory provisions for eligible products. Offers of eligible products receive equal consideration with domestic offers.

(2) The contracting officer shall determine the origin of services by the country in which the firm providing the services is established. See Subpart 25.5 for evaluation procedures for supply contracts covered by trade agreements.

(b) The value of the acquisition is a determining factor in the applicability of trade agreements. Most of these dollar thresholds are subject to revision by the U.S. Trade Representative approximately every 2 years. The various thresholds are summarized as follows:

Trade agreement	Supply contract (equal to or exceeding)	Service contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA	$175,000	$175,000	$6,725,000
FTAs:			
NAFTA:			
—Canada	25,000	58,550	7,611,532
—Mexico	58,550	58,550	7,611,532
Chile FTA	58,550	58,550	6,725,000
Singapore FTA	58,550	58,550	6,725,000
Australia FTA	58,550	58,550	6,725,000
Morocco FTA	175,000	175,000	6,725,000
Israeli Trade Act	50,000		

■ 16. Amend section 25.403 by revising the section heading and paragraphs (a), (b)(1) introductory text, (b)(3), and (c)(1) to read as follows:

25.403 World Trade Organization Government Procurement Agreement and Free Trade Agreements.

(a) Eligible products from WTO GPA and FTA countries are entitled to the nondiscriminatory treatment specified in 25.402(a)(1). The WTO GPA and FTAs specify procurement procedures designed to ensure fairness (see 25.408).

(b) *Thresholds.* (1) To determine whether the acquisition of products by lease, rental, or lease-purchase contract (including lease-to-ownership, or lease-with-option-to purchase) is covered by the WTO GPA or an FTA, calculate the estimated acquisition value as follows:

* * * * *

(3) If, in any 12-month period, recurring or multiple awards for the same type of product or products are anticipated, use the total estimated value of these projected awards to determine whether the WTO GPA or an FTA applies. Do not divide any acquisition with the intent of reducing the estimated value of the acquisition below the dollar threshold of the WTO GPA or an FTA.

(c) *Purchase restriction.* (1) Under the Trade Agreements Act (19 U.S.C. 2512), in acquisitions covered by the WTO GPA, acquire only U.S.-made or designated country end products or U.S. or designated country services, unless offers for such end products or services are either not received or are insufficient to fulfill the requirements. This purchase restriction does not apply below the WTO GPA threshold for supplies and services, even if the acquisition is covered by an FTA.

25.405 [Removed]

■ 17. Remove section 25.405.

25.404 [Redesignated as 25.405]

■ 18. Section 25.404 is redesignated as section 25.405 and revised; and a new section 25.404 is added to read as follows:

25.404 Least developed countries.

For acquisitions covered by the WTO GPA, least developed country end products, construction material, and services must be treated as eligible products.

25.405 Caribbean Basin Trade Initiative.

Under the Caribbean Basin Trade Initiative, the United States Trade Representative has determined that, for acquisitions covered by the WTO GPA, Caribbean Basin country end products, construction material, and services must be treated as eligible products.

■ 19. Amend section 25.406 by revising the first sentence to read as follows:

25.406 Israeli Trade Act.

Acquisitions of supplies by most agencies are covered by the Israeli Trade Act, if the estimated value of the acquisition is $50,000 or more but does not exceed the WTO GPA threshold for supplies (see 25.402(b)). * * *

■ 20. Amend section 25.408 by revising paragraph (a) introductory text and (a)(5) to read as follows:

25.408 Procedures.

(a) If the WTO GPA or an FTA applies (see 25.401), the contracting officer must—

* * * * *

(5) Provide unsuccessful offerors from WTO GPA or FTA countries notice in accordance with 14.409–1 or 15.503.

* * * * *

■ 21. Amend section 25.502 by revising the introductory text of paragraph (b), paragraphs (b)(1) and (b)(3), and the introductory text of paragraph (c) to read as follows:

25.502 Application.

* * * * *

(b) For acquisitions covered by the WTO GPA (see Subpart 25.4)—

(1) Consider only offers of U.S.-made or designated country end products, unless no offers of such end products were received;

* * * * *

(3) If there were no offers of U.S.-made or designated country end products, make a nonavailability determination (see 25.103(b)(2)) and award on the low offer (see 25.403(c)).

(c) For acquisitions not covered by the WTO GPA, but subject to the Buy American Act (an FTA or the Israeli Trade Act also may apply), the following applies:

* * * * *

■ 22. Amend section 25.503 by revising paragraph (a)(2) to read as follows:

25.503 Group offers.

(a) * * *

(2) If the acquisition is covered by the WTO GPA and any part of the offer consists of items restricted in accordance with 25.403(c).

25.504–2 WTO GPA/Caribbean Basin Trade Initiative/FTAs.

* * * * *

■ 23. Revise 25.504–2 section heading to read as set forth above; and remove ''Trade Agreement Act applies'' from the first sentence of the undesignated paragraph following the table in Example 1 and adding ''acquisition is covered by the WTO GPA'' in its place.

25.504–3 [Amended]

■ 24. Amend section 25.504–3 in paragraphs (b) and (c) by removing from the first sentence of the undesignated paragraph following the tables in Examples 2 and 3 ''subject to the Trade Agreements Act'' and adding ''covered by the WTO GPA'' in their place.

25.504–4 [Amended]

■ 25. Amend section 25.504–4 in paragraph (a) by removing from the paragraph entitled ''Problem'', following the table, ''Trade Agreements Act does not apply'' and adding ''acquisition is not covered by the WTO GPA'' in its place; and removing ''subject to the Trade Agreements Act'' from the last

paragraph of ''STEP 2'', and adding ''covered by the WTO GPA'' in its place.

25.1002 [Amended]

■ 26. Amend section 25.1002 in the first sentence of paragraph (a) by removing ''Trade Agreements Act'' and adding ''WTO GPA'' in its place.

25.1101 [Amended]

■ 27. Amend section 25.1101 by removing from the first sentence of paragraph (c)(1) ''Trade Agreements Act applies'' and adding ''acquisition is covered by the WTO GPA'' in its place.

■ 28. Amend section 25.1102 by revising paragraph (c)(1) and the last sentence of paragraph (c)(3) to read as follows:

25.1102 Acquisition of construction.

* * * * *

(c) * * *

(1) List in paragraph (b)(3) of the clause all foreign construction material excepted from the requirements of the Buy American Act, other than WTO GPA country, least developed country, or FTA country construction material.

* * * * *

(3) * * * List in paragraph (b)(3) of the clause all foreign construction material excepted from the requirements of the Buy American Act, other than designated country, or Australian, Chilean, or Moroccan construction material.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 29. Amend section 52.212–3 by revising paragraphs (g)(1)(ii), (g)(4)(i), the first sentence of (g)(4)(ii), and (g)(4)(iii) of the provision to read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (Jan 2005)

* * * * *

(g)(1) * * *

(ii) The offeror certifies that the following supplies are end products of Australia, Canada, Chile, Mexico, or Singapore, or Israeli end products as defined in the clause of this solicitation entitled ''Buy American Act—Free Trade Agreements—Israeli Trade Act'':

END PRODUCTS OF AUSTRALIA, CANADA, CHILE, MEXICO, OR SINGAPORE OR ISRAELI END PRODUCTS:

Line item No.	Country of origin

[List as necessary]

* * * * *

(4) * * *

(i) The offeror certifies that each end product, except those listed in paragraph (g)(4)(ii) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled ''Trade Agreements.''

(ii) The offeror shall list as other end products those end products that are not U.S.-made or designated country end products. * * *

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25. For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.-made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

* * * * *

■ 30. Amend section 52.212–5 by—

■ a. Removing from the clause heading ''(Dec 2004)'' and adding ''(Jan 2005)'' in its place;

■ b. Revising paragraph (b)(24)(i) and (b)(25) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (JAN 2005)

(b) * * *

(24)(i) 52.225–3, Buy American Act—Free Trade Agreements— Israeli Trade Act (Jan 2005) (41 U.S.C. 10a–10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, Pub. L. 108–77, 108–78, 108–286).

* * * * *

(25) 52.225–5, Trade Agreements (Jan 2005) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

* * * * *

■ 31. Amend section 52.225–3—

■ a. By revising the date of the clause to read ''(JAN 2005)'';

■ b. In paragraph (a) of the clause by adding, in alphabetical order, the definition ''End product of Australia, Canada, Chile, Mexico, or Singapore''; and removing the definitions ''Free Trade Agreement country'' and ''Free Trade Agreement country end product''; and

■ c. By revising the first and last sentences of paragraph (c) of the clause to read as follows:

52.225–3 Buy American Act—Free Trade Agreements—Israeli Trade Act.

* * * * *

Buy American Act—Free Trade Agreements—Israeli Trade Act (Jan 2005)

(a) * * *

End product of Australia, Canada, Chile, Mexico, or Singapore means an article that—

(1) Is wholly the growth, product, or manufacture of Australia, Canada, Chile, Mexico, or Singapore; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Australia, Canada, Chile, Mexico, or Singapore into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

* * * * *

(c) *Delivery of end products.* The Contracting Officer has determined that FTAs (except the Morocco FTA) and the Israeli Trade Act apply to this acquisition. * * * If the Contractor specified in its offer that the Contractor would supply an end product of Australia, Canada, Chile, Mexico, or Singapore or an Israeli end product, then the Contractor shall supply an end product of Australia, Canada, Chile, Mexico, or Singapore, an Israeli end product or, at the Contractor's option, a domestic end product.

* * * * *

■ 32. Amend section 52.225–4 by—

■ a. Revising the date of the provision to read ''(Jan 2005)'';

■ b. Revising the last sentence of paragraph (a) of the provision; and

■ c. Revising paragraph (b) of the provision to read as follows:

52.225–4 Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.

* * * * *

Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate (Jan 2005)

(a) * * * The terms ''component,'' ''domestic end product,'' ''end product,'' ''end product of Australia, Canada, Chile, Mexico, or Singapore,'' ''foreign end product,'' ''Israeli end product,'' and ''United States'' are defined in the clause of this solicitation entitled ''Buy American Act—Free Trade Agreements—Israeli Trade Act.''

(b) The offeror certifies that the following supplies are end products of Australia, Canada, Chile, Mexico, or Singapore or Israeli end products as defined in the clause of this solicitation entitled ''Buy American Act—Free Trade Agreements—Israeli Trade Act'':

END PRODUCTS OF AUSTRALIA, CANADA, CHILE, MEXICO, OR SINGAPORE OR ISRAELI END PRODUCTS:

Line item No.	Country of origin

[List as necessary]

* * * * *

■ 33. Amend section 52.225–5 by—

■ a. Revising the date of the clause to read ''(Jan 2005)'';

■ b. Removing from paragraph (a) of the clause the definition ''Caribbean Basin country''; revising the definitions ''Designated country'' and ''Designated country end product''; removing the definition ''Free Trade Agreement country''; adding, in alphabetical order, the definitions ''Least developed country end product'' and ''WTO GPA country end product''; and

■ c. Revising paragraph (b) of the clause to read as follows:

52.225–5 Trade Agreements.

* * * * *

Trade Agreements (Jan 2005)

(a) * * *

Designated country means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);

(2) A Free Trade Agreement country (Australia, Canada, Chile, Mexico, Morocco, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

Designated country end product means a WTO GPA country end product, an FTA country end product, a least developed country end product, or a Caribbean Basin country end product.

* * * * *

Least developed country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

* * * * *

WTO GPA country end product means an article that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services, (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

(b) *Delivery of end products.* The Contracting Officer has determined that the WTO GPA and FTAs apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only U.S.-made or designated country end products except to the extent that, in its offer, it specified delivery of other end products in the provision entitled ''Trade Agreements Certificate.''

(End of clause)

■ 34. Amend section 52.225–6 by—

■ a. Removing from the provision heading ''(Jan 2004)'' and adding ''(Jan 2005)'' in its place; and

■ b. Revising paragraph (a), the first sentence of paragraph (b), and paragraph (c) of the provision to read as follows:

52.225–6 Trade Agreements Certificate.

* * * * *

Trade Agreements Certificate (Jan 2005)

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled ''Trade Agreements.''

(b) The offeror shall list as other end products those supplies that are not U.S.-made or designated country end products.

* * *

(c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation. For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.-made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for those products are insufficient to fulfill the requirements of this solicitation.

(End of provision)

52.225–9 [Amended]

■ 35. Amend section 52.225–9 in the clause heading by removing ''(June 2003)'' and adding ''(Jan 2005)'' in its place; and in paragraph (a) in the definition ''Cost of components'' by removing from the end of paragraph (2) the words ''end product'' and adding ''construction material'' in its place.

■ 36. Amend section 52.225–11—

■ a. By removing from the clause heading ''(Oct 2004)'' and adding ''(Jan 2005)'' in its place;

■ b. In paragraph (a) by adding, in alphabetical order, the definition ''Caribbean Basin country construction material''; by removing from the end of paragraph (2) in the definition ''Cost of components'' the words ''end product'' and adding ''construction material'' in its place; by revising the definitions ''Designated country'' and ''Designated country construction material''; by removing the definition ''Free Trade Agreement country''; and by adding the definitions ''Least developed country construction material'' and ''WTO GPA country construction material'';

■ c. By revising paragraphs (b)(1) and (b)(2) of the clause; and

■ d. By revising Alternate I. The added and revised text reads as follows:

52.225–11 Buy American Act—Construction Materials under Trade Agreements.

* * * * *

Buy American Act—Construction Materials Under Trade Agreements (Jan 2005)

(a) *Definitions.* * * *

Caribbean Basin country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

* * * * *

Designated country means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, or United Kingdom);

(2) A Free Trade Agreement country (Australia, Canada, Chile, Mexico, Morocco, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, East Timor, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, Tanzania, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, or Trinidad and Tobago).

Designated country construction material means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

* * * * *

Least developed country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

* * * * *

WTO GPA country construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

* * * * *

(b) *Construction materials.* (1) This clause implements the Buy American Act (41 U.S.C. 10a–10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials.

(2) The Contractor shall use only domestic, designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

* * * * *

Alternate I (Jan 2005). As prescribed in 25.1102(c)(3), delete the definition of ''designated country construction material'' from the definitions in paragraph (a) of the basic clause, add the following definition of ''Australian, Chilean, or Moroccan construction material'' to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

Australian, Chilean, or Moroccan construction material means a construction material that—

(1) Is wholly the growth, product, or manufacture of Australia, Chile, or Morocco; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Australia, Chile, or Morocco into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.* (1) This clause implements the Buy American Act (41 U.S.C. 10a–10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all the Free Trade Agreements except NAFTA apply to this acquisition. Therefore, the Buy American Act restrictions are waived for WTO GPA country and Australian, Chilean, and Moroccan, least developed country, and Caribbean Basin country construction materials.

(2) The Contractor shall use only domestic, WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

■ 37. Amend section 52.225–12 by—

■ a. Removing from the provision heading ''(JAN 2004)'' and adding ''(JAN 2005)'' in its place;

■ b. Revising paragraphs (a), (d)(1), and the introductory text of (d)(3) of the provision; and

■ c. Removing from Alternate II ''(*Jan 2004*)'' and adding ''(*Jan 2005*)'' in its place; and revising paragraphs (a), (d)(1), and the introductory text of (d)(3) to read as follows:

52.225–12 Notice of Buy American Act Requirement—Construction Materials Under Trade Agreements.

* * * * *

Notice of Buy American Act Requirement—Construction Materials Under Trade Agreements (Jan 2005)

(a) *Definitions.* ''Construction material,'' ''designated country construction material,'' ''domestic construction material,'' and ''foreign construction material,'' as used in this provision, are defined in the clause of this solicitation entitled ''Buy American Act—Construction Materials Under Trade Agreements'' (Federal Acquisition Regulation (FAR) clause 52.225–11).

* * * * *

(d) *Alternate offers.* (1) When an offer includes foreign construction material, other than designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225–11, the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material.

* * * * *

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225–11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material, and the offeror shall be required to furnish such domestic or designated country construction material. An offer based on use of the foreign construction material for which an exception was requested—

* * * * *

(End of provision)

* * * * *

Alternate II (Jan 2005). * * *

(a) *Definitions.* ''Australian, Chilean, or Moroccan construction material,'' ''Caribbean Basin country construction material,'' ''construction material,'' ''domestic construction material,'' ''foreign construction material,'' ''least developed country construction material,'' and ''WTO GPA country construction material,'' as used in this provision, are defined in the clause of this solicitation entitled ''Buy American Act—Construction Materials Under Trade Agreements'' (Federal Acquisition Regulation (FAR) clause 52.225–11).

(d)(1) When an offer includes foreign construction material, other than WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225–11, the offeror also may submit an alternate offer based on use of equivalent domestic, WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material.

* * * * *

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225–11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic, WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material, and the offeror shall be required to furnish such domestic, WTO GPA country, Australian, Chilean, or Moroccan, least developed country, or Caribbean Basin country construction material. An offer based on use of the foreign construction material for which an exception was requested—

* * * * *

[FR Doc. 04–28400 Filed 12–27–04; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2001–27 which amends the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2001–27, which precedes this document. These documents are also available via the Internet at *http://www.acqnet.gov/far.*

FOR FURTHER INFORMATION CONTACT: Laurieann Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact Cecelia Davis at (202) 219–0202.

Free Trade Agreements—Australia and Morocco

This interim rule allows contracting officers to purchase the products of Australia and Morocco without application of the Buy American Act if the acquisition is subject to the Free Trade Agreements. The U.S. Trade Representative negotiated Free Trade Agreements with Australia and Morocco, which go into effect January 1, 2005, according to Public Laws 108–286 and 108–302. These Agreements join the North American Free Trade Agreement (NAFTA) and the Chile and Singapore Free Trade Agreements which are already in the FAR. The threshold for applicability of the Australian Free Trade Agreement is $58,550 (the same as other Free Trade Agreements to date), but the threshold for applicability of the Morocco Free Trade Agreement is $175,000. Because of the short statutory time frame, this is an interim rule. Also in this rule are changes requested by the U.S. Trade Representative, in the list of Least Developed Countries, and changes in terminology on how the FAR uses the terms ''designated country'' and ''Trade Agreements Act.'' Some technical changes are also included.

Dated: December 22, 2004.

Laura Auletta,

Director, Contract Policy Division.

[FR Doc. 04–28401 Filed 12–27–04; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Air quality implementation plans; approval and promulgation; various States:

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Practice and procedure:

Environmental Appeals Board; clarification of address for documents filed; published 12-28-04

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Federal Procurement Data System; direct access by non-governmental entities; published 12-28-04

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Child support orders review and adjustment; reasonable quantitative standard; published 12-28-04

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Agricultural Marketing Service

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Fish and shellfish; country of origin labeling; comments due by 1-3-05; published 10-5-04 [FR 04-22309]

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Animal and Plant Health Inspection Service

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LIST OF PUBLIC LAWS

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H.R. 4012/P.L. 108–457

To amend the District of Columbia College Access Act of 1999 to reauthorize for 2 additional years the public school and private school tuition assistance programs established under the Act. (Dec. 17, 2004; 118 Stat. 3637)

S. 2845/P.L. 108–458

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1–299	(869–052–00126–1)	50.00	July 1, 2004
300–399	(869–052–00127–9)	40.00	July 1, 2004
400–End	(869–052–00128–7)	61.00	July 1, 2004
35	(869–052–00129–5)	10.00	[6]July 1, 2004
36 Parts			
1–199	(869–052–00130–9)	37.00	July 1, 2004
200–299	(869–052–00131–7)	37.00	July 1, 2004
300–End	(869–052–00132–5)	61.00	July 1, 2004
37	(869–052–00133–3)	58.00	July 1, 2004
38 Parts:			
0–17	(869–052–00134–1)	60.00	July 1, 2004
18–End	(869–052–00135–0)	62.00	July 1, 2004
39	(869–052–00136–8)	42.00	July 1, 2004
40 Parts:			
1–49	(869–052–00137–6)	60.00	July 1, 2004
50–51	(869–052–00138–4)	45.00	July 1, 2004
52 (52.01–52.1018)	(869–052–00139–2)	60.00	July 1, 2004
52 (52.1019–End)	(869–052–00140–6)	61.00	July 1, 2004
53–59	(869–052–00141–4)	31.00	July 1, 2004
60 (60.1–End)	(869–052–00142–2)	58.00	July 1, 2004
60 (Apps)	(869–052–00143–1)	57.00	July 1, 2004
61–62	(869–052–00144–9)	45.00	July 1, 2004
63 (63.1–63.599)	(869–052–00145–7)	58.00	July 1, 2004
63 (63.600–63.1199)	(869–052–00146–5)	50.00	July 1, 2004
63 (63.1200–63.1439)	(869–052–00147–3)	50.00	July 1, 2004
63 (63.1440–63.8830)	(869–052–00148–1)	64.00	July 1, 2004
64–71	(869–052–00150–3)	29.00	July 1, 2004
72–80	(869–052–00151–1)	62.00	July 1, 2004
81–85	(869–052–00152–0)	60.00	July 1, 2004
86 (86.1–86.599–99)	(869–052–00153–8)	58.00	July 1, 2004
86 (86.600–1–End)	(869–052–00154–6)	50.00	July 1, 2004
87–99	(869–052–00155–4)	60.00	July 1, 2004
100–135	(869–052–00156–2)	45.00	July 1, 2004
136–149	(869–052–00157–1)	61.00	July 1, 2004
150–189	(869–052–00158–9)	50.00	July 1, 2004
190–259	(869–052–00159–7)	39.00	July 1, 2004
260–265	(869–052–00160–1)	50.00	July 1, 2004
266–299	(869–052–00161–9)	50.00	July 1, 2004
300–399	(869–052–00162–7)	42.00	July 1, 2004
400–424	(869–052–00163–5)	56.00	[8]July 1, 2004
425–699	(869–052–00164–3)	61.00	July 1, 2004
700–789	(869–052–00165–1)	61.00	July 1, 2004
790–End	(869–052–00166–0)	61.00	July 1, 2004
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–052–00167–8)	24.00	July 1, 2004
101	(869–052–00168–6)	21.00	July 1, 2004
102–200	(869–052–00169–4)	56.00	July 1, 2004
201–End	(869–052–00170–8)	24.00	July 1, 2004
42 Parts:			
*1–399	(869–052–00171–6)	61.00	Oct. 1, 2004
400–429	(869–052–00172–4)	63.00	Oct. 1, 2004
430–End	(869–052–00173–2)	64.00	Oct. 1, 2004
43 Parts:			
1–999	(869–052–00174–1)	56.00	Oct. 1, 2004
1000–end	(869–050–00173–0)	62.00	Oct. 1, 2003
44	(869–052–00176–7)	50.00	Oct. 1, 2004
45 Parts:			
1–199	(869–052–00177–5)	60.00	Oct. 1, 2004
200–499	(869–052–00178–3)	34.00	Oct. 1, 2004
*500–1199	(869–052–00179–1)	56.00	Oct. 1, 2004
1200–End	(869–052–00180–5)	61.00	Oct. 1, 2004
46 Parts:			
*1–40	(869–052–00181–3)	46.00	Oct. 1, 2004
*41–69	(869–052–00182–1)	39.00	Oct. 1, 2004
*70–89	(869–052–00183–0)	14.00	Oct. 1, 2004
*90–139	(869–052–00184–8)	44.00	Oct. 1, 2004
140–155	(869–052–00185–6)	25.00	Oct. 1, 2004
156–165	(869–050–00184–5)	34.00	Oct. 1, 2003
166–199	(869–050–00185–3)	46.00	Oct. 1, 2003
200–499	(869–052–00188–1)	40.00	Oct. 1, 2004
500–End	(869–052–00189–9)	25.00	Oct. 1, 2004
47 Parts:			
0–19	(869–050–00188–8)	61.00	Oct. 1, 2003
20–39	(869–050–00189–6)	45.00	Oct. 1, 2003
40–69	(869–050–00190–0)	39.00	Oct. 1, 2003
70–79	(869–050–00191–8)	61.00	Oct. 1, 2003
80–End	(869–050–00192–6)	61.00	Oct. 1, 2003
48 Chapters:			
1 (Parts 1–51)	(869–050–00193–4)	63.00	Oct. 1, 2003
1 (Parts 52–99)	(869–050–00194–2)	50.00	Oct. 1, 2003
2 (Parts 201–299)	(869–052–00197–0)	50.00	Oct. 1, 2004
3–6	(869–052–00198–8)	34.00	Oct. 1, 2004
*7–14	(869–052–00199–6)	56.00	Oct. 1, 2004
15–28	(869–050–00198–5)	57.00	Oct. 1, 2003
*29–End	(869–052–00201–1)	47.00	Oct. 1, 2004
49 Parts:			
*1–99	(869–052–00202–0)	60.00	Oct. 1, 2004

Title	Stock Number	Price	Revision Date
100–185	(869–050–00201–9)	63.00	Oct. 1, 2003
*186–199	(869–052–00204–6)	23.00	Oct. 1, 2004
200–399	(869–050–00203–5)	64.00	Oct. 1, 2003
*400–599	(869–052–00206–2)	64.00	Oct. 1, 2004
600–999	(869–052–00207–1)	19.00	Oct. 1, 2004
*1000–1199	(869–052–00208–9)	28.00	Oct. 1, 2004
1200–End	(869–048–00207–8)	33.00	Oct. 1, 2003
50 Parts:			
1–16	(869–052–00210–1)	11.00	Oct. 1, 2004
17.1–17.95	(869–050–00209–4)	62.00	Oct. 1, 2003
17.96–17.99(h)	(869–050–00210–8)	61.00	Oct. 1, 2003
17.99(i)–end	(869–050–00211–6)	50.00	Oct. 1, 2003
18–199	(869–050–00212–4)	42.00	Oct. 1, 2003
200–599	(869–052–00215–1)	45.00	Oct. 1, 2004
600–End	(869–050–00214–1)	61.00	Oct. 1, 2003
CFR Index and Findings Aids	(869–052–00049–3)	62.00	Jan. 1, 2004
Complete 2004 CFR set		1,342.00	2004
Microfiche CFR Edition:			
Subscription (mailed as issued)		325.00	2004
Individual copies		2.00	2004
Complete set (one-time mailing)		298.00	2003
Complete set (one-time mailing)		298.00	2002

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2004. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2004. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2004. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2003, through July 1, 2004. The CFR volume issued as of July 1, 2003 should be retained.