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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–43–AD; Amendment 39–13835; AD 2004–22–07]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CF6–80C2 Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2004–22–07. That AD applies to GE CF6–80C2 turbofan engines with certain part number (P/N) high pressure turbine stage 2 nozzle guide vanes (HPT S2 NGVs) installed. That AD was published in the **Federal Register** on October 27, 2004 (69 FR 62571). The phrase ''5.0 or more cycles per flight leg'' in the Compliance section is incorrect. This document corrects that phrase. In all other respects, the original document remains the same.

EFFECTIVE DATE: Effective March 4, 2005.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA; telephone (781) 238–7148; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule AD, FR Doc. 04–23929 that applies to GE CF6–80C2 turbofan engines with certain P/N HPT S2 NGVs installed, was published in the **Federal Register** on October 27, 2004 (69 FR 62571). The following correction is needed:

PART 39—[CORRECTED]

§ 39.13 [Corrected]

■ On page 62574, in the first column, in paragraph (h)(1), in the second line, ''more cycles per flight leg,'' is corrected to read ''more hours per flight leg,''

Issued in Burlington, MA, on February 24, 2005.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–4072 Filed 3–3–05; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20431; Directorate Identifier 2005–NM–040–AD; Amendment 39–13995; AD 2005–04–51]

RIN 2120–AA64

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

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

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2005–04–51 that was sent previously to all known U.S. owners and operators of certain Boeing Model 747–100B SUD, –200B, –200C, –200F, and –300 series airplanes by individual notices. This AD requires repetitive external detailed inspections for cracked skin or loose or missing fasteners of the body skin between body stations (BS) 420 and 460 inclusive and between stringers S–8 and S–12 inclusive on the left and right sides of the airplane, and a high frequency eddy current inspection for cracked frames if necessary. This AD also requires repair of any cracked frame or skin, and replacement of any loose or missing fastener. This AD is prompted by reports of large cracks common to fuselage frames in the upper deck area and severed or nearly severed adjacent frames. We are issuing this AD to detect and correct fatigue cracks in the frames and body skin at BS 420, 440, and 460 between stringers S–8 and S–12 inclusive, which could lead to severed frames, and consequent rapid decompression and loss of the structural integrity of the airplane.

DATES: Effective March 9, 2005 to all persons except those persons to whom it was made immediately effective by emergency AD 2005–04–51, issued February 17, 2005, which contained the requirements of this amendment.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of March 9, 2005.

We must receive comments on this AD by May 3, 2005.

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

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

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

Docket: The AD docket contains the emergency AD, comments, and any final disposition. 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 U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2005–20431; the directorate identifier for this docket is 2005–NM–040–AD.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle

Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: On February 17, 2005, we issued emergency AD 2005–04–51, which applies to certain Boeing Model 747–100B SUD, –200B, –200C, –200F, and –300 series airplanes.

Background

On May 7, 1991, we issued AD 91–11–01, amendment 39–6997 (56 FR 22306, May 15, 1991), for certain Boeing Model 747 series airplanes. That AD requires repetitive inspections for cracks of the frame structure and skin in the fuselage section 41, and repair if necessary. That AD also provides for an optional terminating action for the repetitive inspections. That AD was prompted by recommendations of the FAA-sponsored Boeing Model 747 Structures Working Group. We issued that AD to prevent sudden decompression of the fuselage.

Since the issuance of AD 91–11–01, we have received several reports of large fatigue cracks common to fuselage frames in the upper deck area on Boeing Model 747–200C, –200F, and –300 series airplanes. Most of these airplanes had been inspected in accordance with AD 91–11–01. Many fatigue cracks occurred near stringers S–10 and S–10A, but other cracks were also reported. The cracking is due to cyclic pressurization of the airplanes.

We also have received two recent reports of severed or nearly severed adjacent frames at body station (BS) 420 and BS 440 near stringer S–10A on Boeing Model 747–300 series airplanes. Both airplanes had been inspected in accordance with AD 91–11–01. In both reports, missing fasteners common to the skin at frame shear tie flanges were detected in the vicinity of cracks. In one case, eight fasteners were missing from the body skin at the severed frame at BS 440. One airplane had accumulated 11,641 total flight cycles; the other airplane had accumulated 11,880 total flight cycles.

In light of these reports, we have determined that, for certain Boeing Model 747–100B SUD, –200C, –200F, and –300 series airplanes; and certain Boeing Model 747–200B series airplanes retrofitted with a stretched upper deck (SUD); the inspections required by AD 91–11–01 do not adequately detect fatigue cracks at BS 420, 440, and 460 between stringers S–8 and S–12 inclusive. Such fatigue cracking, if not detected and corrected in a timely manner, could lead to severed frames, and consequent rapid decompression and loss of the structural integrity of the airplane.

Other Relevant Rulemaking

On January 16, 1990, we issued AD 90–06–06, amendment 39–6490 (55 FR 8374, March 7, 1990), for certain Boeing Model 747 series airplanes. That AD requires incorporation of certain structural modifications. We issued that AD to prevent degradation in the structural capabilities of the affected airplanes. One of the required modifications incorporates a modification (reference Boeing Service Bulletin 747–53–2272, Revision 12, dated December 22, 1988) that ends the repetitive inspections of the frames in Zone 2 required by this AD.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–53A2265, Revision 9, dated February 17, 2005. Among other actions, the service bulletin describes procedures for repetitive surface high frequency eddy current (HFEC) inspections for cracks in the frames at BS 420, 440, and 460 between stringers S–8 and S–12 inclusive on the left and right sides of the airplane.

FAA's Determination and Requirements of This AD

We evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other Boeing Model 747–100B SUD, –200C, –200F, and –300 series airplanes; and Boeing Model 747–200B series airplanes retrofitted with a SUD of this same type design. Therefore, we issued emergency AD 2005–04–51 to detect and correct fatigue cracks in the frames and body skin at BS 420, 440, and 460 between stringers S–8 and S–12 inclusive, which could lead to severed frames, and consequent rapid decompression and loss of the structural integrity of the airplane. The AD requires repetitive external detailed inspections for cracked skin or loose or missing fasteners of the body skin between BS 420 and 460 inclusive and between stringers S–8 and S–12 inclusive on the left and right sides of the airplane. If any cracked skin or loose or missing fastener is detected, the AD also requires a surface HFEC inspection for cracks in the frames at BS 420, 440, and 460 between stringers S–8 and S–12 on the left and right sides of the airplane; repair of any cracked frame or skin; and replacement of any loose of missing fastener with a new fastener; as applicable. Accomplishing the HFEC inspection ends the repetitive external detailed inspections. The HFEC inspections must be done in accordance with the service information described previously.

We found that immediate corrective action was required; therefore, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on February 17, 2005, to all known U.S. owners and operators of certain Boeing Model 747–100B SUD, –200B, –200C, –200F, and –300 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Interim Action

We consider this AD interim action. We are currently considering superseding this emergency AD and AD 91–11–01 to, among other actions, reduce the initial threshold of the inspections required by AD 91–11–01 for certain airplanes and to add other actions specified in Boeing Alert Service Bulletin 747–53A2265, Revision 9, dated February 17, 2005.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–20431; Directorate Identifier 2005–NM–040–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If this emergency regulation is later deemed significant under DOT Regulatory Policies and Procedures, we will prepare a final regulatory evaluation and place it in the AD Docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation, if filed.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–04–51 Boeing: Amendment 39–13995. Docket No. FAA–2005–20431; Directorate Identifier 2005–NM–040–AD.

Effective Date

(a) This AD becomes effective March 9, 2005, to all persons except those persons to whom it was made immediately effective by emergency AD 2005–04–51, issued on February 17, 2005, which contained the requirements of this amendment.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–100B SUD, –200C, –200F, and –300 series airplanes, line numbers 1 through 685 inclusive; and Boeing Model 747–200B series airplanes, line numbers 271, 276, 336, 344, 369, 389, 397, 474, 491, 518, 521, and 539; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of large cracks common to fuselage frames in the upper deck area and severed or nearly severed adjacent frames. We are issuing this AD to detect and correct fatigue cracks in the frames and body skin at body stations (BS) 420, 440, and 460 between stringers S–8 and S–12 inclusive, which could lead to severed frames, and consequent rapid decompression and loss of the structural integrity of the airplane.

Compliance

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

Repetitive External Detailed Inspections

(f) Before the accumulation of 8,000 total flight cycles, or within 10 flight cycles after the effective date of this AD, whichever occurs later, do an external detailed inspection for cracked skin or loose or missing fasteners of the body skin between BS 420 and 460 inclusive and between stringers S–8 and S–12 inclusive on the left and right sides of the airplane. Repeat the external detailed inspection thereafter at intervals not to exceed 25 flight cycles.

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

Corrective Actions

(g) If any cracked skin or loose or missing fastener is detected during any external detailed inspection required by paragraph (f) of this AD, before further flight, do a surface high frequency eddy current (HFEC) inspection for cracks in the frames at BS 420, 440, and 460 between stringers S–8 and S–12 on the left and right sides of the airplane, in accordance with paragraph 2. and Notes 2 and 3 of Figure 17 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2265, Revision 9, dated February 17, 2005, except as provided by Note 1 of Figure 17 of the service bulletin. Accomplishing the surface HFEC inspection ends the repetitive inspections required by paragraph (f) of this AD.

(1) If no cracked frame is found, before further flight, repair the cracked skin and replace the loose or missing fasteners with new fasteners, as applicable, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the certification basis of the airplane approved by an Authorized Representative (AR) for the Boeing Delegation Option Authorization (DOA) Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically reference this AD.

(2) If any cracked frame is found, before further flight, repair the cracked frame and skin and replace the loose or missing fasteners with new fasteners, as applicable, in accordance with a method approved by the Manager, Seattle ACO, FAA; or in accordance with data meeting the certification basis of the airplane approved by an AR for the Boeing DOA Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically reference this AD.

Terminating Action

(h) Modification in Zone 2 in accordance with Boeing Service Bulletin 747–53–2272, dated January 12, 1987, through Revision 18, dated May 16, 2002, constitutes terminating action for the requirements of this AD.

Note 2: Paragraph H. of AD 91–11–01, amendment 39–6997 refers to Boeing Service Bulletin 747–53–2272, dated January 12, 1987, as the appropriate source of service information for accomplishing the optional terminating action in that AD. AD 90–06–06, amendment 39–6490, refers to Boeing Service Bulletin 747–53–2272, Revision 12, dated December 22, 1988; or earlier revisions; as an appropriate source of service information for accomplishing the mandatory terminating action in that AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD,

if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an AR for the Boeing DOA Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Material Incorporated by Reference

(j) You must use Boeing Alert Service Bulletin 747–53A2265, Revision 9, dated February 17, 2005, to perform the high frequency eddy current inspections that are required by this AD. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. You can review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on February 25, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–4246 Filed 3–3–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9167]

RIN 1545–BC81

Student FICA Exception; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document corrects final regulations (TD 9167), that were published in the **Federal Register** on Tuesday, December 21, 2004 (69 FR 76404) that provides guidance regarding the employment tax exceptions for student services. These regulations affect schools, colleges, and universities and their employees.

DATES: This correction is effective December 21, 2004.

FOR FURTHER INFORMATION CONTACT: John Richards, (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9167) that is the subject of this correction is under sections 3121(b)(10) and 3306(c)(10)(B) of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9167) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

■ Accordingly, the publication of the final regulations (TD 9167) that was the subject of FR. Doc. 04–27919, is corrected as follows:

■ On page 76405, column 1, in the preamble, under the paragraph heading ''Background'', sixth line from the top of the column, the language ''and is regularly attending cases at a'' is corrected to read ''and is regularly attending classes at a''.

Cynthia E. Grigsby,

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

[FR Doc. 05–4279 Filed 3–3–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 1, 102, 104, and 150

[Docket No. 2005–C–054]

RIN 0651–AB86

Correspondence With the United States Patent and Trademark Office

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office) is in the process of completing its move to Alexandria, Virginia. The Office is revising the rules of practice to update the locations and telephone numbers specified in the rules in light of the move to Alexandria, Virginia.

DATES: Effective Date: March 4, 2005.

FOR FURTHER INFORMATION CONTACT: Jennifer M. Simmons, Office of the General Counsel, Office of General Law, by telephone at 571–272–3000.

SUPPLEMENTARY INFORMATION: The Office is in the process of completing its move to Alexandria, Virginia. The Public Search Room, and the Office of the General Counsel are now currently located in the Office's Alexandria, Virginia, campus. The Office is revising the rules of practice to update the references therein to the physical location of the Public Search Room and the Office of the General Counsel, and the telephone number of the Office of the General Counsel.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, is amended as follows:

Part 1: Sections 1.821 and 1.822 are amended.

Part 102: Sections 102.1, 102.22, and 102.23 are amended to change the address for hand-delivery or in-person inquiry to ''10B20, Madison Building East, 600 Dulany Street, Alexandria, Virginia.''

Part 104: Section 104.1 is amended to: (1) Change the address for service by hand to ''the Office of the General Counsel, 10B20, Madison Building East, 600 Dulany Street, Alexandria, Virginia''; and (2) change the telephone number to 571–272–7000.

Part 150: Section 150.6 is amended to change the address to: Mail Stop Congressional Relations, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450.

Classification

Administrative Procedure Act

Since this final rule is directed to changing Office addresses and telephone numbers, this final rule merely involves rules of agency organization, procedure, or practice within the meaning of 5 U.S.C. 553(b)(A). Accordingly, this final rule may be adopted without prior notice and opportunity for public comment under 5 U.S.C. 553(b) and (c), or thirty-day advance publication under 5 U.S.C. 553(d).

Regulatory Flexibility Act

As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not required. *See* 5 U.S.C. 603.

Executive Order 13132

This rule making does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Executive Order 12866

This rule making has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Paperwork Reduction Act

This rule making does not create any information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Inventions and patents, Reporting and recordkeeping requirements, Small Businesses.

37 CFR Part 102

Administrative practice and procedure, Freedom of information, Privacy, Public information.

37 CFR Part 104

Administrative practice and procedure, Claims, Courts, Freedom of information, Inventions and patents, Tort claims, Trademarks.

37 CFR Part 150

Administrative practice and procedure, Authority delegations, Mask works, Science and technology, Semiconductor chip products.

■ For the reasons set forth in the preamble, 37 CFR Parts 1, 102, 104, and 150 are amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

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

Authority: 35 U.S.C. 2(b)(2).

■ 2. Section 1.821 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1.821 Nucleotide and/or amino acid sequence disclosures in patent applications.

(a) Nucleotide and/or amino acid sequences as used in §§ 1.821 through 1.825 are interpreted to mean an unbranched sequence of four or more amino acids or an unbranched sequence of ten or more nucleotides. Branched sequences are specifically excluded from this definition. Sequences with fewer than four specifically defined nucleotides or amino acids are specifically excluded from this section. ''Specifically defined'' means those amino acids other than ''Xaa'' and those nucleotide bases other than ''n''defined in accordance with the World Intellectual Property Organization (WIPO) Handbook on Industrial Property Information and Documentation, Standard ST.25: Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings in Patent Applications (1998), including Tables 1 through 6 in Appendix 2, herein incorporated by reference. (Hereinafter ''WIPO Standard ST.25 (1998)''). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of WIPO Standard ST.25 (1998) may be obtained from the World Intellectual Property Organization; 34 chemin des Colombettes; 1211 Geneva 20 Switzerland. Copies may also be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Nucleotides and amino acids are further defined as follows:

* * * * *

■ 3. Section 1.822 is amended by revising paragraph (b) to read as follows:

§ 1.822 Symbols and format to be used for nucleotide and/or amino acid sequence data.

* * * * *

(b) The code for representing the nucleotide and/or amino acid sequence characters shall conform to the code set forth in the tables in WIPO Standard ST.25 (1998), Appendix 2, Tables 1 and 3. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ST.25 may be obtained from the World Intellectual Property Organization; 34 chemin des Colombettes; 1211 Geneva 20 Switzerland. Copies may also be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* No code other than that specified in these sections shall be used in nucleotide and amino acid sequences. A modified base or modified or unusual amino acid may be presented in a given sequence as the corresponding unmodified base or amino acid if the modified base or modified or unusual amino acid is one of those listed in WIPO Standard ST.25 (1998), Appendix 2, Tables 2 and 4, and the modification is also set forth in the Feature section. Otherwise, each occurrence of a base or amino acid not appearing in WIPO Standard ST.25 (1998), Appendix 2, Tables 1 and 3, shall be listed in a given sequence as ''n'' or ''Xaa,'' respectively, with further information, as appropriate, given in the Feature section, preferably by including one or more feature keys listed in WIPO Standard ST.25 (1998), Appendix 2, Tables 5 and 6.

* * * * *

PART 102—DISCLOSURE OF GOVERNMENT INFORMATION

■ 4. The authority citation for 37 CFR part 102 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C. 553; 31 U.S.C. 3717; 35 U.S.C. 2(b)(2), 21, 41, 42, 122; 44 U.S.C. 3101.

■ 5. Section 102.1 is amended by revising paragraph (b) to read as follows:

§ 102.1 General.

* * * * *

(b) As used in this subpart, *FOIA Officer* means the USPTO employee designated to administer FOIA for USPTO. To ensure prompt processing of a request, correspondence should be addressed to the FOIA Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450, or delivered by hand to 10B20, Madison Building East, 600 Dulany Street, Alexandria, Virginia.

■ 6. Section 102.23 is amended by revising paragraph (a) to read as follows:

§ 102.23 Procedures for making inquiries.

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit an inquiry to USPTO. The inquiry should be made either in person at 10B20, Madison Building East, 600 Dulany Street, Alexandria, Virginia, or by mail addressed to the Privacy Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450, or to the official identified in the notification procedures paragraph of the systems of records notice published in the **Federal Register.** If an individual believes USPTO maintains a record pertaining to that individual but does not know which system of records might contain such a record, the USPTO Privacy

Officer will provide assistance in person or by mail.

* * * * *

■ 7. Section 102.24 is amended by revising paragraph (a) to read as follows:

§ 102.24 Procedures for making requests for records.

(a) Any individual, regardless of age, who is a citizen of the United States or an alien lawfully admitted for permanent residence into the United States may submit a request to the USPTO for access to records. The request should be made either in person at 10B20, Madison Building East, 600 Dulany Street, Alexandria, Virginia, or by mail addressed to the Privacy Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450.

* * * * *

PART 104—LEGAL PROCESSES

■ 8. The authority citation for 37 CFR part 104 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 10, 23, 25; 44 U.S.C. 3101

■ 9. Section 104.2 is amended by revising paragraphs (b) and (c) to read as follows:

§ 104.2 Address for mail and service; telephone number.

* * * * *

(b) Service by hand should be made during business hours to the Office of the General Counsel, 10B20, Madison Building East, 600 Dulany Street, Alexandria, Virginia.

(c) The Office of the General Counsel may be reached by telephone at 571–272–7000 during business hours.

PART 150—REQUESTS FOR PRESIDENTIAL PROCLAMATIONS PURSUANT TO 17 U.S.C. 902(a)(2)

■ 10. The authority citation for 37 CFR part 150 is revised to read as follows:

Authority: 35 U.S.C. 2(b)(2); E.O. 12504, 50 FR 4849; 3 CFR, 1985 Comp., p. 335.

■ 11. Section 150.6 is revised to read as follows:

§ 150.6 Mailing address.

Requests and all correspondence pursuant to these guidelines shall be addressed to: Mail Stop Congressional Relations, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450.

Dated: February 22, 2005.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 05–3744 Filed 3–3–05; 8:45 am]

BILLING CODE 3510–16–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R03–OAR–2005–PA–0001; FRL–7880–4]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Commonwealth of Pennsylvania; Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving delegation of the Federal plan for commercial and industrial solid waste incinerator (CISWI) units to both the Pennsylvania Department of Environmental Protection (PADEP) and the Allegheny County Health Department (ACHD). The Federal plan establishes maximum achievable control technology (MACT) emission limits, monitoring, operating, and recordkeeping requirements for CISWI units for which construction commenced on or before November 30, 1999. PADEP and the ACHD representatives have signed separate, but similar, Memorandum of Agreements (MOA) which act as the mechanism for the transfer of EPA authority to the respective air pollution control agencies. The MOA defines policies, responsibilities, and procedures by which the Federal plan will be administered by the PADEP, and the ACHD on behalf of EPA.

DATES: This rule is effective May 3, 2005, without further notice, unless EPA receives adverse written comment by April 4, 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–2005–PA–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: *http://wilkie.walter@epa.gov.*

D. Mail: R03–OAR–2005–PA–0001, Walter Wilkie, Chief, Air Quality Analysis, Mailcode 3AP22, 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–2005–PA–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 PADEP submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105. Copies of the ACHD submittal are available at the Allegheny County Health Department, 3333 Forbes Avenue, Pittsburgh, Pennsylvania 15213.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, P.E., at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Sections 111(d) and 129 of the Clean Air Act (the ''Act'') require states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the Act, but emissions of which are subject to a standard of performance for new stationary sources. Also, section 129 of the Act, also requires EPA to promulgate EG for solid waste combustion units that emit a mixture of air pollutants. These pollutants include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity). On December 1, 2000 (65 FR 75338), EPA promulgated new source performance standards and EG for CISWI units, 40 CFR part 60, subparts CCCC and DDDD, respectively. The designated facility to which the EG apply is each existing CISWI unit, as stipulated in subpart DDDD, that commenced construction on or before November 30, 1999. *See*, 40 CFR 60.2550 for details. State plan requirements must be ''at least as protective'' as the EG, and federally-enforceable upon approval by EPA. The procedures for adoption and submittal of State plans are codified in 40 CFR part 60, subpart B. For states that fail to submit a plan, EPA is required to develop and implement a Federal plan within two years following promulgation of the EG. EPA implementation and enforcement of the Federal plan is viewed as an interim measure until States assume their role as the preferred implementers of the EG requirements stipulated in the Federal plan. Accordingly, EPA encourages States to either use the Federal plan as a template to reduce the effort needed to develop their own plan, or to simply request delegation of the Federal plan, as the PADEP and the ACHD have done.

II. Submittal and Review of Requests for Delegation by the Federal Plan

A. *PADEP*—On April 16, 2004, the PADEP requested delegation of authority from EPA to implement and enforce the Federal plan for existing CISWI units, codified at 40 CFR part 62, subpart III. The scope of the request includes all affected facilities within the geographical area of the Commonwealth of Pennsylvania, except Allegheny and Philadelphia counties. The ACHD has submitted a separate delegation request to EPA, as noted above, and the City of Philadelphia has submitted a negative declaration that no CISWI units exist within the City of Philadelphia.

Under EPA's Delegation Manual, item 7–139, the Regional Administrator is authorized to delegate implementation and enforcement of section 111(d)/129 Federal plans to State air pollution control agencies. The requirements and limitations of a delegation agreement are defined in item 7–139. Consistent with the requirements of the Delegation Manual, on October 14, 2004, EPA prepared and signed a MOA between the EPA and the PADEP that defines policies, responsibilities, and procedures pursuant to the Federal plan and the related 40 CFR 60 Subpart DDDD (Emission Guidelines), by which the Federal plan will be administered by both agencies. Subsequently, on November 24, 2004, Kathleen A. McGinty, Secretary, PADEP, signed the MOA, thus agreeing to the terms and conditions of the MOA and accepting responsibility for implementation and enforcement of the policies and procedures of the Federal plan, except for certain authorities (*e.g.*, extension of the final compliance date and major revisions to source test methods) retained by EPA.

B. *ACHD*—On April 21, 2004, the ACHD requested delegation of authority from EPA to implement and enforce the Federal plan for existing CISWI units. As noted above, the scope of the request includes only the geographical area of Allegheny County.

Consistent with the requirements of the Delegation Manual, on October 14, 2004, EPA prepared and signed a MOA between the EPA and the ACHD that defines policies, responsibilities, and procedures pursuant to the Federal plan and related EG. Subsequently, on October 19, 2004, Dr. Bruce W. Dixon, Director, ACHD, signed the MOA, thus agreeing to the terms and conditions of the MOA and accepting responsibility for implementation and enforcement of the policies and procedures of the Federal plan, except for certain authorities (*e.g.*, extension of the final compliance date and major revisions to source test methods) retained by EPA.

III. Final Action

Pursuant to EPA's Delegation Manual and the Federal plan preamble, section VI, Implementation of the Federal Plan and Delegation, EPA is approving the requests of the PADEP and the ACHD for delegation of authority to implement and enforce the Federal plan and to adhere to the terms and conditions of the respective MOAs. While both the PADEP and the ACHD are delegated the authority to implement and enforce the Federal plan in their respective air pollution control jurisdictions, nothing in the delegation agreements shall prohibit EPA from enforcing sections 111(d) and 129 requirements of the Act or the Federal plan for CISWI units.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply reflects an already existing Federal requirement for state air pollution control agencies and existing CISWI units that are subject to the provisions of 40 CFR part 60, subparts B and 40 CFR part 62, subpart III, respectively. 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 section 111(d)/129 plan should relevant adverse or critical comments be filed. This rule will be effective May 3, 2005, without further notice unless the Agency receives relevant adverse comments by April 4, 2005. If EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The 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 (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 state requests for 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 section 111(d)/129 plan delegation request 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 section 111(d)/129 Federal plan delegation request for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a section 111(d)/129 Federal plan delegation request, to use VCS in place of a 111(d)/129 plan 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 May 3, 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, approving the PADEP and ACHD requests for delegation of the Federal plan for CISWI units, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Dated: February 17, 2005.

Richard Kampf,

Acting Regional Administrator, Region III.

■ 40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart NN—Pennsylvania

■ 2. A new center heading, after § 62.9670, consisting of §§ 62.9675, 62.9676, 62.9677; and 62.9680, 62.9681, and 62.9682 is added to read as follows:

EMISSIONS FROM EXISTING COMMERCIAL INDUSTRIAL SOLID WASTE INCINERATORS (CISWI) UNITS—SECTION 111(d)/129 FEDERAL PLAN DELEGATIONS

§ 62.9675 Identification of plan—delegation of authority.

On October 14, 2004, EPA signed a Memoranda of Agreement (MOA) that defines policies, responsibilities, and procedures pursuant to 40 CFR part 62, Subpart III (the ''Federal plan'') by which the Federal plan will be administered by the PADEP on behalf of EPA.

§ 62.9676 Identification of sources.

The MOA and related Federal plan apply to all affected CISWI units for which construction commenced on or before November 30, 1999.

§ 62.9677 Effective date of delegation.

The delegation became fully effective on November 24, 2004 the date the MOA was signed by the PADEP Secretary.

§ 62.9680 Identification of plan—delegation of authority.

On October 14, 2004, EPA signed a Memoranda of Agreement (MOA) that defines policies, responsibilities, and procedures pursuant to 40 CFR part 62, Subpart III (the ''Federal plan'') by which the Federal plan will be administered by the Allegheny County

Health Department (ACHD) on behalf of EPA.

§ 62.9681 Identification of sources.

The MOA and related Federal plan apply to all affected CISWI units for which construction commenced on or before November 30, 1999.

§ 62.9682 Effective date of delegation.

The delegation became fully effective on October 19, 2004 the date the MOA was signed by the ACHD Director.

[FR Doc. 05–4271 Filed 3–3–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT54

Endangered and Threatened Wildlife and Plants; Special Rule To Control the Trade of Threatened Beluga Sturgeon (*Huso huso*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are promulgating a special rule under Section 4(d) of the Endangered Species Act of 1973, as amended (Act), to exempt the import and export of and foreign and interstate commerce in certain products of beluga sturgeon (*Huso huso*) from threatened species permits normally required under 50 CFR 17.32. The beluga sturgeon's historical range includes 18 countries within the watersheds of the Caspian Sea, Black Sea, Sea of Azov, and the Adriatic Sea. The species is currently known to occur only in the Caspian and Black Seas and certain rivers connected to these basins. Of the 14 countries where the species still occurs, only 11 have significant beluga sturgeon habitat in the Caspian Sea, Black Sea or Danube River and consequently these countries take responsibility for cooperative management of the species (Azerbaijan, Bulgaria, Georgia, Islamic Republic of Iran, Kazakhstan, Romania, Russian Federation, Serbia and Montenegro, Turkey, Turkmenistan, and Ukraine; hereafter referred to as the ''littoral states''). Overharvest, severe habitat degradation, and other factors have led to the listing of beluga sturgeon as threatened throughout its range under the Act and in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). In our final rule listing the beluga sturgeon as threatened, we delayed the effective date of the listing for 6 months to allow time for us to promulgate a special rule under Section 4(d) of the Act. The listing became effective on October 21, 2004, yet this 4(d) rule was not yet promulgated. Therefore, we promulgated a special interim rule on October 21, 2004, to continue to allow CITES-consistent trade in all beluga sturgeon and products until this 4(d) rule was finalized and effective. When this 4(d) rule becomes effective, it will repeal the special interim rule and the Act will prohibit all trade (import, export, re-export, and foreign and interstate commerce) in beluga sturgeon and beluga sturgeon products, except as provided in the special rule or with permits under the provisions of Section 10 of the Act. This special rule initially allows littoral states 6 months from the rule's effective date to submit a suite of reports and management measures to us for review. During this initial 6-month period, imports, re-exports, and exports of, and interstate and foreign commerce in, certain beluga sturgeon caviar and meat will continue without a requirement for threatened species permits. This is intended to provide the littoral states time to submit the required documents. Similarly, we will consider making programmatic permit exemptions for commercial aquaculture facilities outside the littoral states if they meet certain criteria for: (1) Enhancing the survival of populations of wild beluga sturgeon; and (2) not threatening native aquatic fauna in the country in which the facility is located. CITES documentation will still be required for any international movement of beluga sturgeon and beluga sturgeon products, except as they may qualify for an exemption as personal or household effects.

After an initial 6 months of gathering information from the littoral states, these exemptions will occur only if the information provided fulfills certain requirements, as described below. In addition, all relevant provisions of CITES will continue to govern international trade in all beluga sturgeon products. We are allowing this conditional trade to promote the effective conservation of *Huso huso* in the littoral states, through demonstrable law enforcement and cooperative management activities.

DATES: This rule is effective March 4, 2005. The reasons for this accelerated implementation, which replaces the standard 30-day time frame, are described below in the ''Background'' section.

ADDRESSES: The complete file for this rule is available for inspection by appointment during normal business hours in the office of the Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 750, Arlington, Virginia 22203.

Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to: Division of Management Authority, Branch of Permits—International, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Robert R. Gabel, Chief, Division of Scientific Authority, at the above address (phone: 703–358–1708). For permitting information, contact: Tim Van Norman, Chief, Branch of Permits—International, at the address above (phone: 703–358–2104, or toll free, 1–800–358–2104).

SUPPLEMENTARY INFORMATION:

Background

The beluga sturgeon is a large fish from which highly valued beluga caviar is obtained. The species' range was reduced during the 20th Century and is now limited to the Caspian and Black Sea basins (including the Danube River upstream into Hungary). The species' historic range comprises Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Georgia, Hungary, the Islamic Republic of Iran, Italy, Kazakhstan, Moldova, Romania, the Russian Federation, Slovenia, Serbia and Montenegro, Turkey, Turkmenistan, and Ukraine. Only the 11 littoral states (Azerbaijan, Bulgaria, Georgia, Islamic Republic of Iran, Kazakhstan, Romania, Russian Federation, Serbia and Montenegro, Turkey, Turkmenistan, and Ukraine) apparently have significant remaining habitat for beluga sturgeon, and these countries take responsibility for cooperative management and conservation of beluga sturgeon in the Caspian Sea and Black Sea. Hereafter the term ''Black Sea'' describes both the Black Sea and Sea of Azov basins, which are connected via the Kerch Strait, although the species is believed to be extremely rare or extinct in the Sea of Azov. Hereafter, the term ''basin'' refers to an inland sea (*e.g.*, Black Sea or Caspian Sea) and its bordering coastal lands.

The species is threatened by habitat modification and degradation, overexploitation for trade, and limited natural reproduction. On April 21, 2004, the Service published a final rule (69 FR 21425) to list the beluga sturgeon, *Huso huso*, as threatened throughout its range

under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). That listing in 50 CFR 17.11 will prohibit all trade (import, export, re-export, and foreign and interstate commerce) in beluga sturgeon, except as provided in this special rule. We delayed the effective date of the listing until October 21, 2004, so that we could gather public comments on this special rule, allow adequate time to address those comments, and promulgate a final special rule.

On June 29, 2004, we published a proposed rule under Section 4(d) of the Act (69 FR 38863). This proposal, also announced on our website, initiated a 30-day comment period that closed July 29, 2004. This abbreviated comment period was chosen because of the proximity of the October 21, 2004, effective listing date for the species. We also distributed the preamble (including a full description of the proposed rule and its effects) in both English and Russian to 52 entities in 9 countries at the beginning of the comment period. These entities included national fisheries agencies, research institutes, caviar traders, and non-governmental organizations in the littoral states and elswhere. In addition, we sent the English and Russian translations of the preamble to 10 of the littoral states via U.S. embassies and diplomatic visits. Also, we invited embassy personnel from 9 littoral states that have diplomatic relations with the United States to a briefing on July 22, 2004, at the Service's offices in Arlington, Virginia. Officers from the embassies of Romania, Russia, and Ukraine attended that briefing and listened to Service personnel introduce the proposed rule, but did not offer substantive comments at that time. Written comments were eventually received from government officials in six littoral states, as summarized below. No range countries outside the littoral states commented on the proposed rule. Service personnel also met and discussed the proposed rule with sturgeon aquaculturists and representatives of Caviar Emptor, a consortium of non-governmental organizations that originally petitioned the Service to list the beluga sturgeon under the Act.

As mentioned above, the listing of beluga sturgeon as threatened under the Act became effective on October 21, 2004. This special rule to govern and condition the U.S. trade in threatened beluga sturgeon was not completed on that date, and thus we promulgated a special interim rule on October 21, 2004, to allow the continuation of CITES-consistent trade in beluga sturgeon. This special interim rule was published in the **Federal Register** on October 26, 2004 (69 FR 62415), and was intended to remain in effect until the present special rule could be finalized and promulgated. Therefore, the special interim rule is repealed with the promulgation of this special rule.

The proposed rule described circumstances and limitations that would govern U.S. trade in beluga sturgeon and related products. It proposed an exemption for U.S. traders wishing to import beluga sturgeon caviar and meat originating from the littoral states above, on the condition that these countries submit copies of cooperative fishery management plans and meet certain reporting requirements (these requirements are detailed in ''Description of the special rule'' below). Under the proposed exemption, individuals or businesses would not have to obtain a threatened species permit from the Service, as required under Section 10 of the Act, prior to trading in (importing, exporting, re-exporting, or shipping in interstate or foreign commerce) beluga sturgeon caviar or meat that came from the Caspian or Black Sea basins, regardless of whether these products were of wild or hatchery origin. Under the proposed rule, these traders could not use the exemption to trade in live beluga sturgeon. Furthermore, the proposed exemption did not extend to aquacultured beluga sturgeon products from outside the littoral states (including from U.S. facilities), which still would have required threatened species permits.

Beluga sturgeon populations have benefited from a number of positive conservation measures for all Acipenseriformes species (sturgeons and paddlefishes), which are listed in Appendices I (2 species of sturgeons) and II (23 species of sturgeons and paddlefishes) of CITES. Although commercial trade in wild-caught Appendix-I species is prohibited, CITES Appendix-II species (such as beluga sturgeon) may be traded commercially under a system of permits and international cooperation by the importing and exporting countries.

Over the last several years, the CITES Parties that harvest and trade in sturgeons and sturgeon products (especially caviar) have been compelled by the other CITES Parties to commit to cooperative quota setting, better trade controls, improved enforcement of harvest and trade restrictions, and new management systems to help ensure the species' conservation. We believe that conservation measures for Caspian Sea and Black Sea sturgeon species (like beluga sturgeon) that have been required by the CITES Standing Committee could be effective if fully implemented and expanded upon. We also believe that the most effective way to motivate littoral states to implement these measures is to allow continued open access to U.S. commercial markets (currently responsible for 80 percent of the legal international beluga caviar trade) contingent upon specific improvements in regional and national management programs for the species. Therefore, we are promulgating this special rule, as authorized under Section 4(d) of the Act, to permit continued commercial trade of certain beluga sturgeon products subject to specific provisions. We believe this special rule is necessary and advisable for the species' conservation because it: (1) Offers the greatest incentive for littoral states to remain engaged with the United States in *Huso huso* recovery and conservation; (2) exceeds the requirements of CITES for data reporting, management planning, and research transparency; (3) will continue to impose requirements on the littoral states beyond those currently stipulated by CITES; and (4) will encourage the dissemination of knowledge and expertise from foreign captive-breeding operations to the littoral states. In accordance with 5 U.S.C. 553(d)(3), we find good cause to make this rule effective less than 30 days following the date of publication in the **Federal Register**. We are making this rule effective upon publication. We believe that an immediate effective date is necessary to expedite the engagement of the littoral states, initiate the deadlines imposed for reporting and management actions, and prevent further delays in conserving beluga sturgeon in the wild.

Summary of Comments and Recommendations

We received 33 written comments within the comment period on the proposed rule. Of these, three commenters requested an extension of the comment period. These requests were denied due to the short time frame before the species became effectively listed as threatened on October 21, 2004. Of the 33 comments received, 4 were generally in support of the proposed special rule, 25 expressed concerns regarding all or certain parts of the proposed rule, and 4 were generally neutral regarding the proposed rule.

A large number of the responses received referred specifically, generally, or additionally to information contained in the April 21, 2004, final rule (69 FR 21425) listing beluga sturgeon as threatened under the Endangered Species Act throughout its range.

Comments on the proposed special rule are summarized below. Comments of a similar nature are grouped under a number of general issues.

Issues and Discussion

Issue 1—The rule is ambiguous about how it will treat hybrids of beluga sturgeon, such as bester (a cross between *Huso huso* and *Acipenser ruthenus*).

Response—The final rule that listed *Huso huso* as threatened (69 FR 21425) did not address hybrids, nor did it describe why protecting beluga sturgeon hybrids would contribute to the conservation of the species. Therefore, hybrids of *Huso huso* are not given any protection under the Act, and the special rule (which governs activities in the listed species only) does not affect activities involving bester or other hybrids of beluga sturgeon. This is articulated in the Required Determinations section on the Regulatory Flexibility Act, as well as the definitions of terms in paragraph (y) of the rule (which only refer to *Huso huso*, and not its hybrids). However, international trade and interstate commerce in pure beluga (*i.e.*, specimens with only the *Huso huso* genotype) used in the pursuit of creating hybrids would be covered by the provisions of the Act and this special rule.

Issue 2—The proposed rule poses an unfair trade barrier to aquaculture facilities raising and selling beluga sturgeon outside of the littoral states.

Response—After reviewing the information available to us while developing the rule, we had determined that limiting the permit exemption to beluga sturgeon products from the littoral states would be the best way to engage those nations in cooperative conservation for the species. We believed that such a focused approach would maximize the littoral states' willingness to provide all of the reports and management plans we are requiring for the exemption. However, for reasons outlined under the next issue, we have modified the rule such that certain aquaculture facilities outside the littoral states may apply for programmatic exemptions from threatened species permits governing trade in their products.

Issue 3—The special rule should be expanded to include a threatened species permit exemption for aquaculture facilities outside the littoral states.

Response—While developing the proposed rule, we had concerns about the potential for U.S. or other aquaculture facilities outside the littoral states to expand rapidly, shift markets away from wild fisheries that financially support recovery programs, and substantially diminish the importance of beluga sturgeon in littoral state conservation priorities. In addition, we determined that such a permit exemption should not apply to live beluga sturgeon, including fertilized eggs, larvae, fingerlings, and juveniles. Continued prohibitions on imports of live beluga sturgeon would help prevent expanded and continual introductions of this exotic species into and within the United States, where they may compete with or transmit diseases to other threatened or endangered fishes, including other Acipenseriform species. This control over exotic species introductions is consistent with Federal recovery plans for listed species in the United States. However, several comments on the proposed rule have provided new insight to the nature of the trade in aquacultured beluga sturgeon and the potential benefits to wild populations. For instance, several comments from government officials and non-governmental entities indicated that the sale of aquacultured beluga sturgeon generates revenue for restocking initiatives, research, and law enforcement in the Caspian and Black Sea basins.

Based on the comments received, it appears that littoral state sturgeon recovery efforts benefit from technology transfer and scientific expertise provided by the aquaculture community abroad. We now have evidence that aquaculturists from the United States and other countries conduct technical exchanges on tagging, physiology, release protocols, and other aspects of captive breeding that directly benefit hatchery programs in the littoral states. It is also apparent in the comments received that many if not all aquaculture facilities outside the littoral states utilize captive-bred broodstock (*i.e.*, F1 generation and beyond), rather than relying on wild harvest to supply breeding fish for their operations. Given this new information, we have modified the special rule to allow certain exemptions from threatened species permits for aquaculture facilities outside the littoral states. Such exemptions would permit the import, re-export, and export of, and interstate and foreign commerce in, aquacultured beluga sturgeon caviar and meat from certain aquaculture facilities outside the littoral states. The Service would issue these exemptions after a facility had satisfactorily demonstrated to us that: (1) The relevant regulatory authority has certified that the facility implements sufficient controls to prevent the escape of live animals and disease pathogens; (2) the facility does not rely on wild-origin broodstock for beluga sturgeon production; and (3) the facility has engaged with one or more littoral states in formal agreements to study, protect, or recover wild populations of beluga sturgeon. This programmatic approach to permit exemptions is outlined below. Any such exemption, if granted, will not apply to international trade or interstate commerce in live beluga sturgeon (including viable eggs, larvae, fingerlings, and juveniles) given our ongoing concerns and statutory obligations outlined above. Furthermore, the caviar from such facilities must be labeled as per CITES requirements to allow us to distinguish such products in trade.

Issue 4—In § 17.44(y)(3)(i)(B), it appears that the Service is requiring CITES documents to accompany beluga sturgeon specimens throughout interstate commerce in the United States. This would be extending CITES beyond its usual application, and should be clarified.

Response—We do not intend to require CITES documentation for beluga sturgeon products to move in interstate commerce within the United States. We have clarified this language in the appropriate section of the special rule.

Issue 5—Beluga sturgeon are close to extinction, and therefore the special rule should not allow any commercial trade in the species. The elements of the special rule do not meet the requirements of Section 4(d) of the Act, which mandates that such a rule provide for the conservation of such species.

Response—In our final rule of April 21, 2004 (69 FR 21425), we stated the reasons why we did not conclude that beluga sturgeon are endangered with extinction. As stated earlier, Section 4(d) does not prescribe specific actions that must be accomplished with a special rule. Rather, this section of the Act says the Secretary shall issue regulations as deemed ''necessary and advisable'' for the conservation of the species. In our proposed rule, we articulated why we concluded that permit exemptions for littoral state beluga sturgeon products were advisable. Specifically, this special rule should enhance conservation of wild beluga sturgeon by requiring properly designed and implemented fishery management programs in the littoral states. We believe that the greatest benefit for the conservation of beluga sturgeon will be attained through continued involvement with littoral states that have access to our

commercial markets for sturgeon products, especially caviar, and by conditioning this access on proper management and recovery of wild populations in their waters. The alternative to this special rule is to strictly prohibit U.S. trade in beluga sturgeon products, except as permitted under Section 10 of the Act. We believe this alternative is less advisable than the special rule for a number of reasons, which are described below in the section ''Effects of the Special Rule.''

Issue 6—The proposed rule appears unnecessary and duplicative with the current CITES processes to address sturgeon trade, and may well serve to undermine them. Perceived inadequacies in the CITES resolution governing sturgeon trade should be fixed before a country moves to unilateral measures affecting other CITES Parties.

Response—The special rule acknowledges that the CITES Parties have instituted a suite of sound recommendations for the Caspian Sea littoral states, including the ''Paris Agreement'' in 2001 and subsequent policies, which stipulated numerous conservation actions on behalf of these countries. We also note that there has been measurable progress on these recommendations, and that Parties have codified sturgeon conservation in CITES by adopting Resolution Conf. 12.7, ''Conservation of and trade in sturgeons and paddlefish.'' However, since 2001 the CITES approach to sturgeon conservation in Eurasia has largely involved littoral states reporting directly to the CITES Secretariat for review of their actions under the Paris Agreement. The Secretariat has since then announced its findings, and the reasons behind them, to the other CITES Parties (including the United States). The Secretariat has used these findings to endorse national export quotas for the littoral states. Prior to the listing of beluga sturgeon under the Act, the United States had little authority or reason to scrutinize this arrangement between the littoral states and the Secretariat. However, after we made the determination that the beluga sturgeon is threatened, we had a statutory obligation to ensure the species' conservation and recovery. We determined that simple reliance on third-party reports (*e.g.*, Secretariat newsletters, Notifications to the Parties, etc.) about activities in the littoral states was insufficient to meet our obligations under the Act, and could not provide the level of detail we require to gauge recovery of the species in the wild, and thus compromised our ability to delist the species in the future. This approach is in accordance with Article XIV of CITES, which states that the treaty's provisions ''shall in no way affect the right of Parties to adopt stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens'' covered by the treaty.

Issue 7—The proposed annual report schedules are inappropriate. December 1 should be the deadline for submitting annual reports under the special rule, because the beluga sturgeon fishery is still going on in November. It's unclear why reports should be submitted annually, when the Service will only review them biennially. If annual reports remain part of the special rule, then the Service should take the time to review those submissions annually.

Response—These recommendations are sensible, and we have changed the reporting schedules to reflect reviews of biennial reports due on December 1.

Issue 8—There are no standards or requirements for what must be contained in the management plan for it to be deemed sufficient by the Service. Moreover, international efforts to get the littoral states to come up with such a plan have so far proved fruitless. The rule appears to rely on subjective determinations by the Service, with no recourse for verifying the reports from the littoral states.

Response—In paragraph (y)(4)(i) of the special rule, we specify the minimum requirements for littoral state management plans. These include statements of the recovery goals and objectives, definitions of overfishing, statements of standard size limits or other regulations, quota-setting models and their underlying data, and schedules for adoption. In its official comments on the proposed rule, Iran submitted a copy of the basin-wide management plan for Caspian Sea living resources (including sturgeon). This plan had the signatures of representatives from all but one of the littoral states in the basin (Turkmenistan), and is apparently agreed to for implementation. The Service has working relationships with governmental and non-governmental institutions in Eurasia, and we intend to use these to gather information and clarify the contents of reports submitted under the special rule.

Issue 9—The special rule does not indicate a time frame under which decisions are to be made about the reports submitted. For this regulatory regime to work effectively, there must be a high level of confidence that decisions will be made, with justification given, in a timely and consistent manner.

Response—We acknowledge that the special rule does not specify a time frame for the Service to finish its review of management plans and the required national reports, stating that we will conduct such reviews ''immediately'' after receiving the national reports. We allowed this latitude because we were uncertain of how long the national reports would be, whether the deadline would coincide with unrelated Service deadlines in a particular year, whether translation into English would be required, or how long it would take to establish contact with appropriate officials in the littoral states. We chose to establish unchanging deadlines so that the public could consistently know when we were to begin our reviews, and question us about progress accordingly. However, given the timelines we impose on littoral states and the desire to clarify the Service's review process, we have imposed a 90-day time limit on the Service's review of management plans and national reports.

Issue 10—As a CITES Party, the United States should first attempt to strengthen CITES processes for conservation of beluga sturgeon before taking unilateral measures that affect other CITES Parties.

Response—The decision to list the beluga sturgeon under the Act was prompted by a petition requesting the Service to list the species as endangered. We are obligated to respond to petitions to list species under the Act, and to list the species if listing is warranted. Because we determined that the species qualifies as threatened under the Act, we were obligated to list the species. However, in making the determination to list the species as threatened, we did consider the actions taken by the CITES Parties, including Resolutions and Decisions that are still in effect. We have also crafted a special rule that closely parallels the management and enforcement actions mandated by the CITES Parties, and we have linked the exemptions of the special rule to CITES permitting requirements. We will also continue to actively work for continued improvements in the conservation of sturgeons through CITES.

Issue 11—Sturgeon restoration in the Caspian and Azov—Black Sea regions will be possible only by introducing a complete moratorium on sturgeon harvest, directing littoral countries' efforts toward restoration, and strictly regulating the internal markets of those countries.

Response—Through the special rule, we intend to leverage the monetary value of beluga caviar to accomplish these very goals, by using continued

access into the U.S. market as an incentive to make improvements in management and enforcement for beluga sturgeon. Based on the reporting requirements, and by using corroborating information, we intend to encourage littoral countries to limit harvest to sustainable levels, implement recovery measures for wild populations, and improve enforcement and control overharvest and trade, both domestically and internationally. However, the United States cannot unilaterally impose a ban on harvest in the littoral countries, and such a ban is unlikely as long as the possibility exists to either export to other countries or to use beluga sturgeon caviar and meat within the littoral states.

Issue 12—Implementation of the special rule, as proposed, will necessitate verification of information supplied by the littoral states, including a determination of whether they have taken the necessary actions required by the special rule. It is difficult to imagine that the Service has the capacity to undertake such a responsibility.

Response—The Service implements a number of other similar special rules, which depend on information from range countries as well as other sources, including the monitoring of trade at our ports, CITES trade data, trade reports from TRAFFIC and other non-governmental organizations, and consultation with relevant experts. Indeed, the decision to list the species under the Act required the same type of information-gathering and analysis—including obtaining information from littoral states—as will be required for determining whether to allow trade under the special rule.

Summary of Differences Between Proposed and Final Special Rules for Beluga Sturgeon

Based on the comments received and our professional judgment, we modified only a few components of the proposed special rule when finalizing it for promulgation. These changes are noted above in the ''Issues and Discussion'' section, and summarized here for ease of interpretation.

The most notable change to the proposed rule was in the treatment of aquaculture facilities outside the littoral states. In the proposed rule, trade in beluga sturgeon caviar and meat originating from these facilities would not have been exempt from threatened species permits if such trade was conducted by persons under U.S. jurisdiction (except for personal and household effects). In the final rule, we have made allowances for aquaculture facilities outside the littoral states (including those in the United States) to apply for programmatic exemptions from threatened species permits. Such exemptions would only apply to beluga sturgeon caviar and meat from these facilities, and caviar must be labeled to note its origin as per the requirements of CITES (even in U.S. interstate trade). Under this final rule, such programmatic exemptions will only be granted if: (1) The relevant regulatory agency has certified that the facility is using best management practices to prevent escapes and disease introduction into surrounding habitats, and the Service has approved the specific practices; (2) the facility has entered into a formal agreement with one or more littoral states to study, conserve, or otherwise enhance the survival of wild populations of beluga sturgeon; and (3) the facility is utilizing only captive-bred beluga sturgeon (*i.e.*, captive F1 generation and beyond) in its production systems. See paragraph (y)(5) below in the Regulation Promulgation section for more detail on these programmatic exemptions.

Second, we modified the proposed rule language to clarify that we will not require CITES permits to accompany beluga sturgeon caviar and meat in U.S. interstate commerce. This language change was noted and corrected in the final language for § 17.44(y)(3)(i)(B).

Third, we modified certain reporting deadlines and schedules in the proposed rule. The proposed rule would have required littoral states wishing to have their beluga sturgeon caviar and meat exempted from threatened species permits to submit annual reports on November 1 of each year. These reports would have been reviewed by the Service biennially to determine if a trade suspension should be enacted for beluga products from a particular country. In the final rule, we modified this schedule so that the reporting deadline is December 1 and national reports must be submitted biennially (instead of annually) to coincide with our review schedule. We also inserted a 90-day deadline for the Service to initially review management plans, national regulations, and biennial reports. There was no such time limit on the Service in the proposed rule.

Description of the Special Rule

The purpose of this special rule is to enhance the conservation of wild beluga sturgeon by requiring properly designed and implemented fishery management programs in the littoral states. We believe that the greatest benefit for the conservation of beluga sturgeon will be attained through continued involvement with littoral states that have access to our commercial sturgeon markets, and by conditioning this access on proper management and recovery of wild populations in their waters. The alternative to this special rule is to strictly prohibit U.S. trade in beluga sturgeon products, except as permitted under Section 10 of the Act. We believe this alternative is less advisable than the special rule for a number of reasons, as described at the end of the section ''Effects of the Special Rule.'' We intend to use this special rule to build upon the progress already made by the littoral states in CITES forums, while recognizing that there are certain data gaps and information and management needs yet to be filled.

For example, we note that since 2001 the littoral states in the Black Sea and Caspian Sea basins have committed to cooperative management frameworks, including the Black Sea Sturgeon Management Group and the Commission on Aquatic Bioresources of the Caspian Sea. These bodies have set annual quotas for beluga and other sturgeon species in the two basins, and have representatives from each of the sturgeon-harvesting and -trading littoral states in the respective regions. Despite the progress made by the littoral states, we concur with findings of recent reports from the CITES Secretariat (Anonymous 2002a, 2002b) on problems in national and regional *Huso huso* management. These include: (1) The absence of a formal, written management plan for Black Sea beluga sturgeon as called for in CITES Resolution Conf. 12.7 (rev. COP13); (2) a lack of transparency in data analysis and quota setting; (3) continued high levels of poaching and illegal trade; and (4) a data-poor evaluation of hatchery protocols and restocking programs. Therefore, for those littoral states wishing to export beluga sturgeon caviar and meat to the United States, this special rule would require:

1. Submission of basin-wide beluga sturgeon management plans for the Black Sea and Caspian Sea littoral states;

2. Submission of national regulations that implement the basin-wide cooperative plan mentioned in item 1, including information on hatchery and restocking protocols and monitoring results;

3. Submission of biennial reports documenting management measures in place and current status of *Huso huso* in the given country;

4. Labeling of imported, exported, and domestically traded beluga caviar products as per CITES Resolutions and Decisions;

5. Biennial review by the Service of littoral state management and restocking programs for beluga sturgeon;

6. Compliance with CITES provisions and recommendations (including permits) for beluga sturgeon imports and exports involving the United States; and

7. Suspension of imports basin-wide or by country if the conservation status or management approach for *Huso huso* changes and compromises the recovery of beluga sturgeon in the wild. See discussion below for how such a suspension would be imposed.

The trade in caviar and meat taken from wild or hatchery-origin beluga sturgeon originating from the littoral states would be exempt from threatened species permits under this special rule.

This special rule would not exempt from threatened species permit requirements international trade (import, export, re-export, or foreign commerce) or interstate commerce in live specimens of beluga sturgeon, including adults, gametes (eggs or sperm), viable eggs, fingerlings, and juveniles. We have concluded that aquaculture or grow-out of foreign sturgeon species in the United States can pose a risk to the recovery efforts for several native sturgeon species listed under the Act or under interstate recovery plans. This risk comes from the potential competition between native sturgeons and unintentionally released fish from facilities culturing exotic sturgeons and disease transmission from foreign species. These concerns are articulated in both State and Federal sturgeon recovery plans (ASMFC 1998; NMFS 1998; USFWS and GSMFC 1995), as well as Federal policy on invasive species and fish health. Therefore, we intend to use this special rule to limit the dispersal of live beluga sturgeon throughout the United States yet utilize existing captive populations for maximum conservation benefit in the littoral states. Except in certain circumstances, this special rule does not exempt beluga sturgeon or any beluga sturgeon products derived from aquaculture or grow-out operations outside the littoral states from the provisions of the Act, which could (1) undermine the incentives for conserving wild *Huso huso* in the littoral states; (2) utilize Huso huso broodstock from the littoral states without any direct benefit to wild populations; and (3) result in the release of beluga sturgeon or disease pathogens into habitats outside their native range. Therefore, import, export, re-export, or interstate or foreign commerce involving any beluga sturgeon products that originate from aquaculture operations outside the littoral states will normally require a threatened species permit in addition to any applicable CITES documents (except as provided for captive-bred wildlife in 50 CFR 17.21(g)). However, the Service will consider programmatic exemptions to this prohibition for beluga caviar and meat from aquaculture facilities that provide information to our offices to demonstrate that (1) the relevant regulatory agency has certified that the facility is using best management practices to prevent escapes and disease introduction into surrounding habitats, and the Service has approved the specific practices; (2) the facility has entered into a formal agreement with one or more littoral states to study, conserve, or otherwise enhance the survival of wild populations of beluga sturgeon; and (3) the facility is utilizing only captive-bred beluga sturgeon (*i.e.*, captive F1 generation and beyond) in its production systems. The facilities will be required to file biennial reports with the Service in order for us to document the results and efficacy of any arrangements with littoral states. See paragraph (y)(5) below in the Regulation Promulgation section for more detail on these programmatic exemptions.

As per CITES Resolution Conf. 12.9, and existing U.S. policy, this special rule would allow for the legal export, re-export, and import of personal effects of caviar. Under Resolution Conf. 12.9, individuals may export, re-export, or import up to 250 grams of any Appendix-II Acipenseriformes caviar without a CITES permit. This allowance would apply in the United States, and export, re-export, or import of personal effects of beluga caviar (as defined by the CITES Parties) would not require a threatened species permit under the Act. However, any trade suspension administratively implemented under this special rule would also prohibit the importation of beluga caviar personal effects.

Under the rule we will require the submission of certain documentation from the littoral states, specifically:

1. Within 6 months of the effective date of this special rule, if adopted, each littoral state wishing to export beluga caviar or beluga meat to the United States without the need for a threatened species permit issued under § 17.32 must submit to the Service's Division of Scientific Authority a copy of a cooperative management plan for their respective basin. This plan must be agreed to by each littoral state in the relevant basin (not just exporting nations). These comprise Bulgaria, Georgia, Romania, Serbia and Montenegro, Turkey, and Ukraine in the Black Sea and Danube River, and Azerbaijan, the Islamic Republic of Iran, Kazakhstan, the Russian Federation, and Turkmenistan in the Caspian Sea. This basin-wide management plan must contain the following elements:

a. A clear statement of the recovery and management objectives for the plan, including a specification of the stock(s) concerned, a definition of what constitutes over-fishing for that stock, and a rebuilding objective and schedule for that stock;

b. A statement of standard fishery management measures and habitat improvement strategies to be utilized by the nations involved (*e.g.*, size limits, target harvest rates, quotas, seasons, fishing gear, effort caps, fish passage improvement, water quality controls);

c. A complete statement of the specific regulatory, monitoring, and research requirements that each cooperating nation must implement to be in compliance with the management plan;

d. A complete description of how stock survey data and fisheries data are used to establish annual catch and export quotas, including a full explanation of any models used and the assumptions underlying those models;

e. Procedures under which the nations may implement and enforce alternative management measures that achieve the same conservation benefits for beluga sturgeon as the standards mentioned in paragraph b; and

f. A complete schedule by which nations must take particular actions to be in compliance with the plan.

The Service's Division of Scientific Authority will review these basin-wide management plans within 90 days of receipt for completeness and clarity. If any elements of the management plans are missing or unclear, we will ask the appropriate littoral states to provide additional information within 60 days of the date we contact them. If the littoral states fail to respond or fail to submit basin-wide management plans by the specified deadlines, or if we are unable to confirm that all littoral states are signatories to those plans, we will immediately suspend trade with all littoral states in the given basin (Caspian Sea or Black Sea) until we are satisfied that such management plans exist.

2. Within 6 months of the effective date of this special rule, all littoral states wishing to export beluga caviar and meat to the United States exempt from threatened species permits must submit copies of national legislation and national fishery regulations pertaining to the harvest, trade, aquaculture, restocking, and processing of beluga sturgeon. These laws and regulations

must exhibit clear means to implement the cooperative management plans mentioned in paragraph 1 above. Upon receipt, the Service's Division of Scientific Authority will review these laws and regulations within 90 days for completeness and clarity. If any elements of the national legislation or national fishery regulations are missing or unclear, we will ask the appropriate littoral state(s) to provide additional information within 60 days of the date we contact them. If the littoral states fail to respond or fail to submit copies of national laws and regulations by the specified deadlines, we will immediately suspend trade with the given littoral states until we are satisfied that such laws and regulations are in effect.

3. No later than December 1, 2005, and every 2 years on that anniversary, all littoral states wishing to export beluga sturgeon products to the United States must submit a report to the Service. This report must contain, at a minimum:

a. A description of the specific fishery regulations that affect the harvest of *Huso huso* in the respective littoral state, with any changes from the previous report highlighted;

b. A description of any revisions to the cooperative management program mentioned above, including any new models, assumptions, or equations used to set harvest and export quotas;

c. Updated time-series of information on beluga sturgeon obtained from monitoring programs, including estimates of relative or absolute stock size, fishing mortality, natural mortality, spawning activity, habitat use, hatchery and restocking programs, and other relevant subjects;

d. A summary of law enforcement activities undertaken in the last 2 years, and a description of any changes in programs to prevent poaching and smuggling, including indicators of their effectiveness;

e. A summary of the revenues generated by the commercial exploitation of beluga sturgeon in the respective littoral state, and a summary of any documented conservation benefits resulting from the commercial harvest program in that country (*e.g.*, revenues allocated to hatchery and restocking programs or research programs); and

f. Export data for the previous 2 calendar years.

Starting in December 2005, the Service will conduct a review of information in the littoral state reports and any other pertinent information on wild beluga sturgeon conservation. Thereafter, we will continue to conduct these reviews biennially within 90 days of receiving the reports. If any elements of the biennial reports are missing or unclear, the Service will ask the appropriate littoral states to provide additional information within 60 days of the date we contact them. If the littoral states fail to respond or fail to submit biennial reports by the specified deadline, we will immediately suspend trade with the given littoral states. We propose to use these reviews to determine whether littoral state management programs are leading to recovery of wild beluga sturgeon stocks.

Although we have no ability to regulate take or institute recovery plans for beluga sturgeon in the littoral states, we have identified general short-term and long-term recovery objectives for beluga sturgeon in the Caspian and Black Seas. These objectives will help us gauge the efficacy of this special rule, and monitor progress toward beluga sturgeon restoration in the wild as indicated in the biennial reports mentioned above. The short-term objective is to prevent further reduction of existing wild populations of beluga sturgeon. Baseline population indices for each beluga sturgeon stock are under development (Anonymous 2002c) or in the planning stages (Anonymous 2002a, 2002b), and changes in these indices will be evaluated over 3- to 5-year periods. The long-term recovery goal for beluga sturgeon is to establish self-sustaining stocks in the Caspian and Black Sea basins that can withstand directed fishing pressure. A self-sustaining stock is one in which the average rate of recruitment to the juvenile stage at least equals the average mortality rate across the population over a 12- to 17-year period (the period required for beluga sturgeon to reach maturity).

Based on the review of biennial reports, we propose to administratively suspend or restrict imports, exports, and interstate commerce involving beluga sturgeon products from the littoral states if we determine that wild beluga sturgeon stock status worsens or threats to the species increase. Any such restriction would also apply to foreign commerce in beluga sturgeon products involving U.S. citizens. Trade restrictions or suspensions may result basin-wide or for specific littoral states under one or more of the following scenarios:

1. Failure to submit copies of any of the reports, legislation, and management plans described above, or failure to respond to requests for additional information;

2. A change in regional cooperative management that threatens the recovery of wild beluga sturgeon;

3. A change in littoral state laws or regulations that compromises beluga sturgeon recovery or survival in the wild;

4. Adoption of scientifically unsound hatchery practices or restocking programs for beluga sturgeon;

5. A decline in wild *Huso huso* populations, as documented in national reports outlined above or the scientific literature, that goes unaddressed by regional or national management programs;

6. Failure to address poaching or smuggling in beluga sturgeon, their parts, or products in the littoral states or re-exporting countries, as documented in national reports described above or other law enforcement sources;

7. Failure of the littoral states to address the loss of beluga sturgeon habitat quality or quantity;

8. Failure of the littoral states or re-exporting countries to follow the caviar-labeling recommendations of the CITES Parties (currently embodied in Resolution Conf. 12.7);

9. Recommendations from the CITES Standing Committee to suspend trade in beluga sturgeon from one or more countries;

10. An aquaculture facility outside the littoral states has been issued a programmatic exemption from threatened species permits, but is not abiding by the conditions placed on that facility by the Service, or

11. Any other natural or human-induced phenomenon that threatens the survival or recovery of beluga sturgeon.

Under this special rule, we will decide whether to suspend trade in beluga sturgeon products for an entire basin or on a country-specific basis, including re-exporting countries (*i.e.*, those that import beluga sturgeon products from elsewhere and then export them to the United States). This decision, made by the Service's Division of Scientific Authority in consultation with relevant experts, will depend on the scope of the problem observed, the magnitude of the threat to wild beluga sturgeon, and whether remedial action is necessary at a local, national, or region-wide scale. Upon determination that a trade restriction or suspension is necessary, we will publish our findings in the **Federal Register** with the following information:

(A) The problem(s) identified in the biennial reports or other salient documents.

(B) The scope of the problem and the number of nations involved.

(C) The scope of the trade restriction or suspension we are imposing, including products covered, duration of the restriction or suspension, and criteria for lifting it and reinstating any exemption to threatened species permits.

(D) How the public can provide input, make comments, and recommend remedial action to withdraw the trade measures imposed.

Effects of the Special Rule

Consistent with Sections 3(3) and 4(d) of the Act, this special rule amends 50 CFR 17.44 to allow importation and exportation of, and foreign and interstate commerce in, beluga sturgeon caviar and meat, without a threatened species permit otherwise required by 50 CFR part 17, if all requirements of the special rule and 50 CFR part 13 (General Permit Procedures), part 14 (Importation, Exportation, and Transportation of Wildlife), and part 23 (Endangered Species Convention—CITES) are met. This special rule also repeals 50 CFR 17.31(d), which resulted from our special interim rule of October 21, 2004, and is now replaced by the provisions of this special rule.

This special rule does not end protection for the species. To qualify for permit exemptions under this special rule, beluga sturgeon caviar and meat must originate from: (1) Fish taken in littoral states that have complied with the management and reporting requirements mentioned above, or (2) aquaculture operations in countries other than littoral states that enhance the survival of beluga sturgeon and do not pose a threat to native species where they are located. Furthermore, beluga caviar must be labeled as per the recommendations of the CITES Parties (even for U.S. domestic trade), and all beluga sturgeon products imported into or exported from the United States must be accompanied by valid CITES Appendix-II export permits or re-export certificates. The special rule will not encourage the export and diversion of hatchery broodstock from the littoral states into the United States, which could undermine conservation efforts for wild beluga sturgeon in the littoral states. Import or export of, and interstate and foreign commerce in (involving persons under U.S. jurisdiction), all live *Huso huso* would still require a threatened species permit. Issuance of these permits is predicated on some direct benefit to wild populations of beluga sturgeon in all range countries (including the littoral states) and avoidance of risk to U.S. native species posed by the expansion of exotic sturgeon aquaculture.

Imports into the United States of beluga sturgeon products will be allowed from countries that have designated both a CITES Management Authority and Scientific Authority, and have not been identified by the CITES Conference of the Parties, the CITES Standing Committee, or in a Notification from the CITES Secretariat as countries from which Parties are asked not to accept shipments of specimens of beluga sturgeon or all CITES-listed species. This restriction will also apply to intermediary countries that import beluga sturgeon products and subsequently export them to the United States. The Service's Division of Management Authority will provide on request a list of those countries that have not designated either a Management Authority or a Scientific Authority, or that have been identified as a country from which Parties are asked not to accept shipments of specimens of any CITES-listed species that would include beluga sturgeon.

As noted above, this special rule exempts trade in beluga caviar or meat from the requirements for threatened species permits when the caviar or meat originates from certain aquaculture facilities outside of littoral states, provided they meet certain criteria to ensure protection of wild beluga sturgeon as well as the ecosystems of the countries in which they are located. We will exempt these specimens from threatened species permits for import, export, re-export, and interstate and foreign commerce when the activity enhances the conservation of the species in the wild and does not pose a threat to native species (especially other Acipenseriformes) or ecosystems where the facilities are located. In addition, all imports, exports, and re-exports of beluga sturgeon specimens will require the presentation of valid CITES permits and certificates as per 50 CFR part 23.

As noted above, the Service's Division of Scientific Authority will conduct a review beginning in December 2005 and every 2 years thereafter based on information in the littoral state reports, and other available information, to determine whether littoral state and regional management programs are effectively achieving conservation benefits for wild beluga sturgeon populations. Trade restrictions or a trade suspension can be placed on a littoral state if the Service's Division of Scientific Authority administratively determines that the conservation or management status of beluga sturgeon in that country has changed such that continued recovery of the species is compromised. This provision gives the Service the ability to react effectively to potential conservation concerns that may emerge, such as persistent high levels of poaching in some areas, changes in laws or regulations that appear to be detrimental to the species in the wild, or the lack of submission of the required biennial reports and management plans.

We believe the issuance of this special rule is necessary and advisable for the conservation of the species for the following reasons:

1. Exempting the commercial trade in wild-origin and hatchery-origin beluga caviar and meat from permit requirements, with conditions, will expedite transfer of specimens into and out of the United States without compromising the species' recovery. This expedited trade offers an incentive to littoral states to meet the requirements in this special rule, which are stricter than those imposed by CITES and require more detailed information on stock status and management measures than CITES reports.

2. Without this special rule, we would prohibit all commercial trade in beluga caviar and meat unless authorized with a threatened species permits and appropriate CITES documentation. Such a restriction could reasonably be expected to: (a) Hamper or cease multilateral discussions between the United States and the littoral states on beluga sturgeon conservation; (b) diminish or eliminate the high revenue gained from U.S. beluga caviar markets that is used by littoral states to support recovery programs for the species; (c) redirect beluga sturgeon products from monitored international trade into unmonitored domestic markets; and (d) force us to rely on limited international trade data when assessing changes in harvest levels and market demand. All of these outcomes increase the conservation risks for the species while reducing the amount of data needed for informed decision-making at the regional and international level.

3. Nearly all of the recommendations promulgated by the CITES Standing Committee for the littoral states have been achieved or nearly achieved, according to the CITES Secretariat. The CITES Parties have recently modified their resolution on trade in sturgeons, calling for some ongoing review of littoral state conservation strategies in the Black Sea and Caspian Sea basins. At this time, however, we are unable to predict how the CITES system will require updates and systematic changes in littoral state management programs for Huso huso after the Standing Committee and the Parties review compliance with the 2001

recommendations and the new Resolution on sturgeon conservation. If pressure from CITES processes abates, this special rule offers our most promising tool for getting information from the littoral states and influencing recovery programs for beluga sturgeon throughout its range.

Required Determinations

A Record of Compliance was prepared for this rule. A Record of Compliance certifies that a rulemaking action complies with the various statutory, Executive Order, and Department Manual requirements applicable to rulemaking. Without this special rule, individuals subject to the jurisdiction of the United States would be prohibited from engaging in domestic and international trade in beluga sturgeon meat and caviar except as permitted by Section 10 of the Act. Without this rule, anyone engaging in those activities would need to seek an authorization from us through a permit under Section 10(a) of the Act. This process takes time and can involve an economic cost. The rule would allow these individuals to avoid the costs associated with abstaining from conducting these activities or with seeking a threatened species permit from us. These economic benefits, while important, do not rise to the level of ''significant'' under the following required determinations.

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action. The Office of Management and Budget makes the final determination under Executive Order 12866. We have prepared a Record of Compliance (ROC) that describes the economic effects of this final rule, and this ROC is available upon request. Our analysis examined each of the five exemptions of ESA Section 9 trade prohibitions that would be created by the 4(d) rule. Any costs incurred are associated with businesses satisfying particular conditions to partake in import and export trade and aquaculture. In terms of benefits, we do not expect any changes due to this rulemaking. All trade exemptions will permit the continuation of current activities. This rule will not create inconsistencies with other Federal agencies' actions. Other Federal agencies will be mostly unaffected by this rule. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Because this rule will allow individuals to continue otherwise prohibited activities without first obtaining individual authorization, the rule's impacts on affected individuals will be positive. This rule will not raise novel legal or policy issues. We have previously promulgated special rules under Section 4(d) of the Act for other species, including other foreign species.

Regulatory Flexibility Act

We have determined that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required, and a Small Entity Compliance Guide is not required. To assess the effects of the rule on small entities, we focus on the caviar import, export, and aquaculture industries in the United States because these are the entities most likely to be affected by the rule, particularly those engaged in beluga caviar importation, production, and distribution in the United States. The U.S. Small Business Administration defines a ''small business'' as one with annual revenue or employment that meets or is below the established size standard, which is $6 million for ''Fish and Seafood Markets'' (NAICS 445220), 100 employees for ''Fish and Seafood Merchant Wholesalers'' (NAICS 424460), and $750,000 for ''Finfish Farming and Fish Hatcheries'' (NAICS 112511). The U.S. Economic Census does not capture the detail necessary to determine the number of small businesses that are engaged in commerce with beluga products.

In 2002, the most recent year for which we have import data, 15 businesses accounted for all of the foreign-source sturgeon caviar legally imported to the United States. It is possible that some of these businesses did not trade in beluga sturgeon. For those 15 importers, the 10 largest importers accounted for 94% of all imported caviar (by weight), whereas the top 6 importers accounted for 85% of the U.S. trade (by weight). All importers in 2002 and 2003 had estimated retail sales less than $6 million in beluga caviar products (based on the average $3,200/kg). However, it is likely that these businesses sell other products in addition to beluga caviar. Therefore, it is difficult to estimate the size of each business and the relative impact of the proposed rulemaking.

Currently, there are no U.S. entities commercially producing caviar and meat from aquaculture of pure (*i.e.*, non-hybridized) *H. huso.* However, there is at least one U.S. institution that is currently holding beluga sturgeon for future commercial production of beluga caviar and meat, the State of Florida is working with aquaculture facilities on the feasibility of commercial aquaculture of hybrid ''bester'' sturgeon products (bester is a hybrid of beluga sturgeon and sterlet, *Acipenser ruthenus,* another sturgeon species), and another facility in Nevada has been identified that is working toward production of bester caviar. These businesses may be impacted by the costs to meet the conditions outlined earlier. We do not expect these costs to have a significant impact.

This rule reduces the regulatory burden of the listing of beluga sturgeon, because without this rule all trade prohibitions of Section 9 of the ESA would apply to the import, export, re-export, or foreign and interstate commerce in *H. huso.* This rule allows certain activities to continue, avoiding costs that may be associated with abstaining from trade in beluga sturgeon or going through the ESA permitting process. The rule exempts five activities from the trade prohibitions: the take, import, export (including re-export), foreign commerce, and interstate commerce in beluga sturgeon products originating from the waters of the Caspian and Black Seas or derived from aquaculture. The rule also exempts the international movement of personal effects (as defined in the rule itself) containing beluga sturgeon from ESA permitting provisions.

We have determined that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

The Service examined each of the four exemptions of the Act's Section 9 trade prohibitions that will be created by the special rule (import, export, interstate commerce, and foreign commerce). We determined that the foreign commerce

exemption will have little or no economic effect (*i.e.*, will not ease any significant cost that would have been imposed by Section 9 without the rule). In foreign countries, this exemption will allow individuals and businesses subject to U.S. jurisdiction to engage in commerce involving beluga sturgeon products originating from littoral states without the need for threatened species permits. We are not aware of such commerce currently, and therefore this exemption will create minimal benefits.

The Service also examined the impact of the special rule on import, export, and re-export of, and interstate commerce in, beluga sturgeon products originating from littoral states. This exemption will not have significant economic effects in regard to scientific samples or personal effects moving in and out of the United States, given our recorded low volume of such transactions. However, this exemption will create significant benefits to beluga sturgeon traders commercially importing, exporting, and selling across State lines beluga sturgeon caviar and meat originating from the littoral states. Without the rule, Section 9 would prevent all current import, export, re-export, and interstate commerce, and traders would receive no income from lucrative U.S. markets for beluga sturgeon meat or caviar. With the rule, this international trade and interstate commerce could continue with an estimated annual net income of $16–39 million for the traders, a beneficial effect of the rule.

We are unable to quantify the U.S. economic impact of the exemption from permits granted for aquaculture facilities outside of littoral states (including U.S. operations) under paragraph (y)(5) in the rule. This is primarily because (1) U.S. aquaculture facilities are not yet producing beluga sturgeon caviar and meat; and (2) the global extent of aquacultured beluga sturgeon production is largely unquantified. Given the information available on the species' long reproductive cycle and the high cost of starting individual beluga sturgeon aquaculture operations, we expect the economic impact of such exemptions to be positive, but relatively small.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. By reducing the regulatory burden placed on affected individuals resulting from the listing of the beluga sturgeon as a threatened species, this rule will reduce the likelihood of potential takings. Affected individuals will have more freedom to pursue activities (*i.e.*, import and re-export) involving beluga sturgeon without first obtaining individual authorization.

Federalism

In accordance with Executive Order 13132, this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Executive Order.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320 implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The OMB regulations at 5 CFR 1320.3(c) define a ''collection of information'' as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on 10 or more persons. Furthermore, 5 CFR 1320.3(c)(4) specifies that ''10 or more persons'' refers to the persons to whom a collection of information is addressed by the agency within any 12-month period. For purposes of this definition, employees of the Federal Government are not included. A Federal 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.

This rule refers to CITES permits required for the export to or from the United States of beluga sturgeon caviar and meat. Our CITES permit applications are already approved by OMB under OMB control number 1018–0093, which expires June 30, 2007.

In addition, this rule will newly require certain other information, including national management plans, national regulations, annual reports, and labeling of shipments, to be provided to the Service by littoral states wishing to export beluga sturgeon products to the United States. The rule also requires information to be submitted by aquaculture facilities outside of littoral states if they wish to be exempted from permit requirements under the Endangered Species Act. The new information requirements do not, however, require OMB approval under the Paperwork Reduction Act, as explained below.

Although we identify 11 countries with significant habitat in the current range of the beluga sturgeon, only 8 of these countries (Azerbaijan, Bulgaria, Iran, Kazakhstan, Romania, Russia, Serbia and Montenegro, and Turkmenistan) currently have a national program to commercially harvest and export beluga sturgeon. Therefore, only those 8 countries with existing beluga sturgeon export industries will be able to provide the information required by this rule to the Service. In addition, we are currently aware of only one aquaculture facility, located in the United States and which is not yet commercially viable, that may eventually take advantage of the exemption for aquacultured specimens originating from outside littoral states. Therefore, the threshold of 10 or more respondents per year is not met, and OMB approval is not required.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA), and have determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the NEPA, and it will not involve unresolved conflicts concerning alternative uses of available resources (516 DM 2.3A). Therefore, this rule is categorically excluded under 516 DM 2, Appendix 1.10.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations With Native American Tribal Governments'' (59 FR 22951) and E.O. 13175, we have evaluated possible effects on Federally recognized Indian Tribes. We have determined that, because no Indian trust resources occur within the range of the beluga sturgeon, this rule will have no effects on Federally recognized Indian Tribes.

Executive Order 13211

We have evaluated this rule in accordance with E.O. 13211 and have

determined that this rule will have no effects on energy supply, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Literature Cited

Anonymous. 2002a. Caspian Sea sturgeons. Interpretation and implementation of the Convention, significant trade in Appendix-II species. 47th meeting of the Standing Committee; 1–2 November 2002; Santiago, Chile. SC47 Doc. 11.

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ASMFC. 1998. Amendment 1 to the interstate fishery management plan for Atlantic sturgeon. Fishery management report no. 31 of the Atlantic States Marine Fisheries Commission. July 1998. 43 pp.

NMFS. 1998. Final recovery plan for the shortnose sturgeon, *Acipenser brevirostrum*. December 1998. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service. 104 pp.

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Author

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List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

■ For the reasons stated in the preamble, the Service hereby amends part 17, subpart B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17— [AMENDED]

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

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

■ 2. In § 17.11(h) revise the entry for the ''Sturgeon, beluga,'' under ''Fishes,'' on the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Sturgeon, beluga	*Huso huso*	Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Georgia, Hungary, Islamic Republic of Iran, Italy, Kazakhstan, Republic of Moldova, Romania, Russian Federation, Serbia and Montenegro, Turkey, Turkmenistan, Ukraine.	Entire	T	743	NA	17.44 (y)

§ 17.31 [Amended]

■ 3. Amend § 17.31 by removing paragraph (d).

■ 4. Amend § 17.44 by adding paragraph (y) to read as follows:

§ 17.44 Special rules—fishes.

* * * * *

(y) *Beluga sturgeon.* This paragraph applies to the threatened beluga sturgeon (*Huso huso*).

(1) *How are various terms defined in this special rule?* In addition to the definitions specified in § 10.12 of subchapter B of this chapter, we define certain terms that specifically apply to beluga sturgeon trade and this special rule as follows:

Aquacultured beluga sturgeon products. Eggs, larvae, fingerlings, or other products derived from *Huso huso* captive-bred or grown in captivity for commercial purposes starting at least at the F1 generation in captivity (*i.e.*, captive-bred for at least one generation).

Beluga caviar. Processed unfertilized eggs from female *Huso huso* intended for human consumption, including products containing such eggs (*e.g.*, cosmetics).

Beluga meat. Excised muscle tissue of *Huso huso* destined for human consumption.

Black Sea. The contiguous waters of the Black Sea and the Sea of Azov.

CITES. The Convention on International Trade in Endangered Species of Wild Fauna and Flora.

Export. The transport of a beluga sturgeon specimen out of its country of origin.

Hatchery-origin beluga sturgeon. Specimens of *Huso huso* captive-bred solely in the littoral states, primarily for reintroduction and stock enhancement purposes. Such specimens can occur in the natural marine environment of the littoral states.

Live or living beluga sturgeon. Any living specimen of *Huso huso*, including viable unfertilized or fertilized eggs, larvae, fingerlings, juveniles, and adults.

Littoral states. Azerbaijan, Bulgaria, Georgia, Islamic Republic of Iran, Kazakhstan, Romania, Russian Federation, Serbia and Montenegro, Turkey, Turkmenistan, and Ukraine.

Re-export. Export of beluga sturgeon specimens that were previously imported.

Wild beluga sturgeon. Specimens of *Huso huso* born and reared in the natural marine environment within the current or former geographic range of the species.

(2) *What activities involving beluga sturgeon are affected by this rule?* (i) *International trade in beluga sturgeon.* Except as provided in paragraph (y)(3) and (y)(5) of this section, all prohibitions and provisions of §§ 17.31(a) and 17.32 apply to the international trade in beluga sturgeon, including its parts and derivatives. Live beluga sturgeon remain subject to all the prohibitions and provisions of §§ 17.31(a) and 17.32.

(ii) *Trade without CITES documents.* Except as provided in paragraphs (y)(3) of this section, you may not import, export, or re-export, or present for export or re-export beluga sturgeon or beluga sturgeon products without valid CITES permits and other permits and licenses issued under parts 13, 17, and 23 of this chapter.

(iii) *Commercial activity.* Except as provided in paragraphs (y)(3) and (5) of this section and § 17.32, you may not sell or offer for sale, deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of a commercial activity any beluga sturgeon or beluga sturgeon products.

(iv) It is unlawful for any person subject to the jurisdiction of the United States to commit, attempt to commit, solicit to commit, or cause to be committed any acts described in paragraphs (y)(2)(ii) and (iii) of this section.

(3) *What activities are exempted from threatened species permits by this rule?* (i) *Import, export or re-export, and interstate and foreign commerce involving certain caviar and meat obtained from beluga sturgeon.* You may import, export or re-export, or conduct interstate or foreign commerce in beluga sturgeon caviar and meat without a threatened species permit issued according to § 17.32 only if the caviar and meat are derived from wild or hatchery-origin beluga sturgeon that were caught and processed in the littoral states, or the caviar and meat are exempt from permits because they originate from qualifying aquaculture facilities outside of littoral states (*see* paragraph (y)(5)). Also, the provisions in parts 13, 14, and 23 of this chapter and the following requirements must be met:

(A) Any beluga caviar must comply with all CITES labeling requirements, as defined in relevant Resolutions or Decisions of the Conference of the Parties, including beluga caviar in interstate commerce in the United States. All individuals or businesses in the United States wishing to engage in domestic interstate commerce of beluga sturgeon caviar must follow the CITES caviar-labeling requirements.

(B) The shipment must be accompanied by a valid CITES permit or certificate upon import, export, or re-export.

(C) For each shipment covered by this exemption, the country of origin and each country of re-export, and the country of import involved in the trade of a particular shipment, must have designated both a CITES Management Authority and Scientific Authority, and have not been identified by the CITES Conference of the Parties, the CITES Standing Committee, or in a Notification from the CITES Secretariat as a country from which Parties should not accept permits for beluga sturgeon or all CITES-listed species in general.

(D) The littoral state from which the beluga sturgeon caviar or meat originated has complied with all of the requirements shown in paragraph (y)(4) of this section, and none of the exporting, importing, or re-exporting countries involved in the commercial activity has been subject to an administrative trade restriction or suspension as outlined in paragraphs (y)(6) and (7) of this section.

(E) Any relevant aquaculture facility located outside of a littoral state has complied with all of the requirements shown in paragraph (y)(5) of this section.

(ii) *Import and re-export of non-commercial personal or household effects.* You may import, export or re-export, or conduct interstate or foreign commerce in beluga sturgeon personal or household effects without a threatened species permit issued according to § 17.32. Also, for CITES permits, Article VII.3. of CITES recognizes a limited exemption for the international movement of personal and household effects, including specimens of beluga sturgeon.

(A) *Stricter national measures.* The exemption for personal and household effects does not apply if a country prohibits or restricts the import, export, or re-export of the item.

(1) You or your shipment must be accompanied by any document required by a country under its stricter national measures.

(2) In the United States, you must obtain any permission needed under other regulations in this subchapter.

(B) *Required CITES documents.* You must obtain a CITES document for personal or household effects and meet the requirements of this part if one of the following applies:

(1) The Management Authority of the importing, exporting, or re-exporting country requires a CITES document.

(2) You or your shipment does not meet all of the conditions for an exemption as provided in paragraphs (y)(3)(ii)(C) through (E) of this section.

(3) The personal or household effect exceeds 250 grams of beluga caviar. To import, export, or re-export more than 250 grams, you must have a valid CITES document for the entire quantity.

(C) *Personal effects.* You do not need a CITES document to import, export, or re-export any part, product, derivative, or manufactured article of a legally acquired beluga sturgeon specimen to or from the United States if all of the following conditions are met:

(1) No living beluga sturgeon is included.

(2) You personally own and possess the item for non-commercial purposes, including any item intended as a personal gift.

(3) The item and quantity of items are reasonably necessary or appropriate for the nature of your trip or stay.

(4) You are either wearing the item as clothing or an accessory or taking it as part of your personal baggage, which is being carried by you or checked as baggage on the same plane, boat, car, or train as you.

(5) The item was not mailed or shipped separately.

(D) *Household effects.* You do not need a CITES document to import, export, or re-export any part, product, derivative, or manufactured article of a legally acquired beluga sturgeon specimen that is part of a shipment of your household effects when moving your residence to or from the United States, if all of the following conditions are met:

(1) No living beluga sturgeon is included.

(2) You personally own the item and are moving it for non-commercial purposes.

(3) The item and quantity of items are reasonably necessary or appropriate for household use.

(4) You import, export, or re-export your household effects within 1 year of changing your residence from one country to another.

(5) The shipment, or shipments if you cannot move all of your household effects at one time, contains only items

purchased, inherited, or otherwise acquired before you moved your residence.

(E) *Trade restrictions.* Regardless of the provisions above for personal and household effects, any trade suspension or trade restriction administratively imposed by the Service under paragraphs (y)(6) or (7) of this section could also apply to personal and household effects of beluga caviar.

(4) *What must beluga sturgeon littoral states do to be authorized under the special rule to export to the United States?* The following requirements apply to the littoral states wishing to export beluga caviar or beluga meat to the United States without the need for a threatened species permit issued under § 17.32. These requirements apply to all shipments of beluga caviar and beluga meat that originate in the littoral states, even if the shipments are re-exported to the United States via an intermediary country. (*See* paragraph (y)(7) of this section for more information on the Service's biennial reviews under the special rule.)

(i) Basin-wide *beluga sturgeon management plans.* By September 6, 2005, each littoral state wishing to export beluga caviar or beluga meat to the United States without the need for a threatened species permit issued under § 17.32 must submit to the Service's Division of Scientific Authority a copy of a cooperative management plan for its respective basin (*i.e.*, Black Sea or Caspian Sea) that addresses *Huso huso* conservation. Each of these two basin-wide management plans must be agreed to by all of the littoral states (not just exporting nations) in the Black Sea or the Caspian Sea, as appropriate. Upon receipt, the Division of Scientific Authority will review these basin-wide management plans within 90 days for completeness and clarity. If any elements of the management plans are missing or unclear, we will ask the appropriate littoral states to provide additional information within 60 days of the date we contact them. If the littoral states fail to respond or fail to submit basin-wide management plans by the specified deadline, or if we are unable to confirm that all littoral states are signatories to those plans, we will immediately suspend trade with all littoral states in the given basin (Caspian Sea or Black Sea) until we are satisfied that such management plans exist. Submission of documents in English may help expedite the Service's review. These cooperative management plans must contain the following elements:

(A) A clear statement of the recovery and management objectives of the plan, including a specification of the stock(s) concerned, a definition of what constitutes over-fishing for that stock, and a rebuilding objective and schedule for that stock;

(B) A statement of standard regulations and habitat improvement strategies (*e.g.*, size limits, target harvest rates, quotas, seasons, fishing gear, effort caps, fish passage improvement, water quality controls) to be utilized by the nations involved;

(C) A complete statement of the specific regulatory, monitoring, and research requirements that each cooperating nation must implement to be in compliance with the management plan;

(D) A complete description of how stock survey data and fisheries data are used to establish annual catch and export quotas, including a full explanation of any models used and the assumptions underlying those models;

(E) Procedures under which the nations may implement and enforce alternative management measures that achieve the same conservation benefits for beluga sturgeon as the standards mentioned in paragraph (y)(4)(i)(B) of this section; and

(F) A complete schedule by which nations must take particular actions to be in compliance with the plan.

(ii) *National regulations.* By September 6, 2005, each littoral state wishing to export beluga caviar or beluga meat to the United States under this special rule must provide the Service's Division of Scientific Authority with copies of national legislation and regulations that implement the basin-wide cooperative management plan described in paragraph (y)(4)(i) of this section, including regulations pertaining to the harvest, trade, aquaculture, restocking, and processing of beluga sturgeon. Upon receipt, the Division of Scientific Authority will review these basin-wide management plans within 90 days for completeness and clarity. If any elements of the national legislation or national fishery regulations are missing or unclear, we will ask the appropriate littoral states to provide additional information within 60 days of the date we contact them. If the littoral states fail to respond or fail to submit copies of national laws and regulations by the specified deadline, we will immediately suspend trade with the given littoral states until we are satisfied that such laws and regulations are in effect. Submission of documents in English may help expedite the Service's review.

(iii) *Caviar labeling.* All caviar shipments imported into the United States must follow the CITES caviar-labeling requirements as agreed to in the relevant Resolutions and Decisions of the CITES Parties. Current labeling requirements can be obtained by contacting the Service (*see* **FOR FURTHER INFORMATION CONTACT** above).

(iv) *CITES compliance.* Except as provided in paragraph (y)(3)(ii) of this section, all shipments of beluga sturgeon specimens, including those exempted from threatened species permits under this special rule, will require accompanying valid CITES permits and certificates upon import, export, or re-export.

(v) *Initial reporting period.* Until September 6, 2005, no threatened species permits will be required for the import, export, re-export, or interstate or foreign commerce of beluga sturgeon caviar and meat that originated in the littoral states, in order to provide the littoral states time to submit the required documentation. After this 6-month period, the exemption from threatened species permits will continue only while the Service reviews littoral state compliance with paragraphs (y)(4)(i) through (iv) of this section. If this review demonstrates that the provisions of this special rule are not met, the Service will announce and institute trade restrictions or suspensions in beluga sturgeon caviar or meat with one or more littoral states as per paragraph (y)(7) of this section.

(vi) *Biennial reports.* Littoral state governments wishing to export specimens of beluga sturgeon caviar or meat to the United States under this special rule must provide to the Service's Division of Scientific Authority reports containing the most recent information available on the status of the species, following the information guidelines specified below. The Service must receive the first report no later than December 1, 2005, and every 2 years thereafter on the anniversary of that date. Starting in December 2005, and thereafter on a biennial basis, the Service will review the national reports within 90 days of receiving them and any other pertinent information on wild beluga sturgeon conservation. If any elements of the biennial reports are missing or unclear, the Service will ask the appropriate littoral states to provide additional information within 60 days of the date we contact them. If the littoral states fail to respond or fail to submit biennial reports by the specified deadline, we will immediately suspend trade with the given littoral states (*see* paragraph (y)(7) of this section for details on how such a suspension would be instituted and announced). Submission of documents in English may help

expedite the Service's review. We propose to use these reviews to determine whether littoral state management programs are leading to recovery of wild beluga sturgeon stocks. For each littoral state, the following information must be provided in the biennial reports:

(A) A description of the specific fishery regulations that affect the harvest of *Huso huso* in the respective littoral state, with any changes from the previous report highlighted;

(B) A description of any revisions to the cooperative management program mentioned in paragraph (y)(4)(i) of this section, including any new models, assumptions, or equations used to set harvest and export quotas;

(C) New information obtained in the last 2 years on beluga sturgeon distribution, stock size, models used for quota-setting, spawning activity, habitat use, hatchery programs and results, or other relevant subjects;

(D) A summary of law enforcement activities undertaken in the last 2 years, and a description of any changes in programs to prevent poaching and smuggling, including indicators of their effectiveness;

(E) A summary of the revenues generated by the commercial exploitation of beluga sturgeon in the respective littoral state, and a summary of any documented conservation benefits resulting from the commercial harvest program in that country (*e.g.*, revenues allocated to hatchery and restocking programs or research programs); and

(F) Export data for the previous two calendar years.

(5) *Can aquacultured beluga sturgeon products be exempt from threatened species permits if the products originate outside the littoral states?* We will consider exemptions from threatened species permits for beluga caviar and meat obtained from aquaculture facilities outside the littoral states. These exemptions will be for individual facilities, and would allow aquacultured beluga caviar and meat originating from these facilities to be imported, exported, re-exported, or traded in interstate and foreign commerce without threatened species permits issued under Section 10 of the Act. Aquaculture facilities within the United States could also be exempt from prohibitions against take for purposes of harvesting caviar or meat (*i.e.*, killing of beluga sturgeon), or for conducting activities involving research to enhance the survival or propagation of the species. Facilities outside the littoral states wishing to obtain such exemptions must submit a written request to the Division of Management Authority, Branch of Permits—International (*see* **FOR FURTHER INFORMATION CONTACT** above) and provide to the Service's Division of Scientific Authority, at a minimum, information that shows all of the following:

(i) The facility in question is using best management practices to prevent the escape of beluga sturgeon and disease pathogens into local ecosystems, as certified by the relevant regulatory agency. In the case of the United States, the relevant regulatory authority will be the state agency with jurisdiction over aquaculture. In the case of foreign aquaculture facilities outside the littoral states, the relevant regulatory agency will be the designated CITES Management Authority with jurisdiction over sturgeon. Best management practices that affect the applicant's facility must be part of the application and available for Service review.

(ii) The facility in question has entered into a formal agreement with one or more littoral states to study, protect, or otherwise enhance the survival of wild beluga sturgeon. Copies of such agreements must be provided.

(iii) The facility in question does not rely on wild beluga sturgeon for broodstock. Proof of broodstock origin, including relevant CITES permits that accompanied broodstock specimens upon import into the United States, must be part of the application.

(iv) Exemptions granted under this paragraph shall not apply to trade (import, export, re-export, or interstate and foreign commerce) in live beluga sturgeon, and may be revoked at any time if the Service determines that any of the criteria shown in paragraphs (y)(5)(i) through (iii) of this section are not met by the facility. Applicants will be required to submit biennial reports on their compliance with paragraphs (y)(5)(i) through (iii) of this section, starting on the second anniversary of any programmatic exemption granted to the applicants. These biennial reports must show that exempted facilities have actively cooperated with one or more littoral states in a meaningful way to support beluga sturgeon conservation. Any beluga caviar originating from aquaculture facilities outside the littoral states must comply with CITES caviar-labeling requirements, even in interstate commerce within the United States. We will publish an information notice if the Service grants a programmatic exemption to any aquaculture facility outside the littoral states, and announce such actions through our website and posting notices at our wildlife ports of entry. We will follow the provisions of paragraphs (y)(6) and (y)(7) of this section to announce restrictions or revocations of such programmatic exemptions, based on our review of facilities' biennial reports.

(6) *How will the Service inform the public of CITES restrictions on trade in beluga sturgeon?* We will issue an information bulletin that identifies a restriction or suspension of trade in specimens of beluga sturgeon and post it on our websites (*http://le.fws.gov* and *http://international.fws.gov*) and at our staffed wildlife ports of entry if any criterion in paragraphs (y)(6)(i) through (iii) of this section is met:

(i) The country is lacking a designated Management Authority or Scientific Authority for the issuance of valid CITES documents or their equivalent for beluga sturgeon.

(ii) The country is identified in any action adopted by the CITES Conference of the Parties, the CITES Standing Committee, or in a Notification to the Parties issued by the CITES Secretariat as a country from which Parties are asked not to accept shipments of specimens of beluga sturgeon or all CITES-listed species.

Note to paragraph (y)(6): A listing of all countries that have not designated either a Management Authority or Scientific Authority, or that have been identified as countries from which Parties should not accept permits, is available by writing to: Division of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203.

(7) *How will the Service set trade restrictions or prohibitions under the special rule?* The Service's Division of Scientific Authority will conduct a biennial review of beluga sturgeon conservation based on information in the cooperative basin-wide management plans, national regulations and laws, and biennial reports (submitted as per paragraph (y)(4) of this section, and paragraph (y)(5) for aquaculture facilities). We will combine that review with a review of other relevant information (*e.g.*, scientific literature, law enforcement data, government-to-government consultations) to determine whether littoral state management programs and aquaculture operations are effectively achieving conservation benefits for beluga sturgeon. Based on this information, or the failure to obtain it, the Service may restrict or prohibit trade from a littoral state, a re-exporting intermediary country, or an entire basin (*i.e.*, the Caspian Sea or Black Sea) or a specific aquaculture facility outside the littoral states if we determine that the conservation or management status of beluga sturgeon has been adversely affected and the continued recovery of beluga sturgeon may be compromised.

The decision to restrict or prohibit trade in beluga sturgeon products on a national, basin, or region-wide scale will depend on the scope of the problem observed, the magnitude of the threat to wild beluga sturgeon, and whether remedial action is necessary at a national, basin, or region-wide scale.

(i) Trade restrictions or suspensions may result basin-wide, for specific littoral states, or for non-littoral state aquaculture facilities under one or more of the following scenarios:

(A) Failure to submit any of the reports, legislation, and management plans described above, or failure to respond to requests for additional information;

(B) A change in regional cooperative management that threatens the recovery of wild beluga sturgeon;

(C) A change in littoral state laws or regulations that compromises beluga sturgeon recovery or survival in the wild;

(D) Adoption of scientifically unsound hatchery practices or restocking programs for beluga sturgeon;

(E) A decline in wild *Huso huso* populations, as documented in national reports outlined above or the scientific literature, that goes unaddressed by regional or national management programs;

(F) Failure to address poaching or smuggling in beluga sturgeon, their parts, or products in the littoral states or re-exporting countries, as documented in national reports described above or other law enforcement sources;

(G) Failure of the littoral states to address the loss of beluga sturgeon habitat quality or quantity;

(H) Failure of the littoral states or re-exporting countries to follow the caviar-labeling recommendations of the CITES Parties (currently embodied in Resolution Conf. 12.7);

(I) Recommendations from the CITES Standing Committee to suspend trade in beluga sturgeon from one or more countries; or

(J) An aquaculture facility outside the littoral states has been issued a programmatic exemption from threatened species permits under paragraph (y)(5) of this section, but is not abiding by the provisions of paragraph (y)(5)(i) through (iii) or, based on the biennial reports required under (y)(5), has not actively cooperated with one or more littoral states in a meaningful way to support beluga sturgeon conservation.

(K) Any other natural or human-induced phenomenon that threatens the survival or recovery of beluga sturgeon.

(ii) We will publish an information notice in the **Federal Register**, as well as on our Web site and at our wildlife ports of entry, if the Service's Division of Scientific Authority administratively suspends or restricts trade in beluga sturgeon products after determining that wild beluga sturgeon stock status worsens or threats to the species increase. This information notice will provide:

(A) The problem(s) identified in the biennial reports or other salient documents.

(B) The scope of the problem and the number of nations involved.

(C) The scope of the trade restriction or suspension we are imposing, including products covered, duration of the restriction or suspension, and criteria for lifting it and reinstating any exemption to threatened species permits.

(D) How the public can provide input, make comments, and recommend remedial action to withdraw the trade measures imposed.

Dated: January 10, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–4278 Filed 3–3–05; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041202339–4339–01; I.D. 030105F]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2005 first seasonal allowance of the pollock total allowable catch (TAC) for Statistical Area 620 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 2, 2005, until superseded by the notice of 2005 and 2006 final harvest specifications of groundfish of the GOA, which will be published in the **Federal Register**.

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

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

The 2005 first seasonal allowance of the pollock TAC for Statistical Area 620 of the GOA is 11,692 metric tons (mt) as established by the 2005 and 2006 harvest specifications for groundfish of the GOA (70 FR 8958, February 24, 2005).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2005 first seasonal allowance of the pollock TAC in Statistical Area 620 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 11,492 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 620 of the GOA.

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

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

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

Dated: March 1, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–4284 Filed 3–1–05; 2:32 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 022805E]

Fisheries of the Exclusive Economic Zone Off Alaska; Species in the Rock Sole/Flathead Sole/''Other Flatfish'' Fishery Category by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

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

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for species in the rock sole/flathead sole/''other flatfish'' fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal apportionment of the 2005 halibut bycatch allowance specified for the trawl rock sole/flathead sole/''other flatfish'' fishery category in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 1, 2005, through 1200 hrs, A.l.t., April 1, 2005.

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

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

The first seasonal apportionment of the 2005 halibut bycatch allowance specified for the trawl rock sole/flathead sole/''other flatfish'' fishery category in the BSAI is 448 metric tons as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the amount of the first seasonal apportionment of the 2005 halibut bycatch allowance specified for the trawl rock sole/flathead sole/''other flatfish'' fishery category in the BSAI has been caught. Consequently, NMFS is closing directed fishing for species in the rock sole/flathead sole/''other flatfish'' fishery category by vessels using trawl gear in the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for species in the rock sole/flathead sole/''other flatfish'' fishery category by vessels using trawl gear in the BSAI.

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

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: February 28, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–4283 Filed 3–1–05; 2:32 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 42
Friday, March 4, 2005

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

FEDERAL RESERVE SYSTEM

12 CFR Parts 210 and 229

[Regulations J and CC; Docket No. R–1226]

Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire and Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board of Governors is requesting comment on proposed amendments to Regulation CC that would define ''remotely created checks'' and create transfer and presentment warranties for such checks. The purpose of the amendments is to shift liability for unauthorized remotely created checks to the depositary bank, which is generally the bank for the person that initially created and deposited the remotely created check. The Board is also proposing conforming cross-references to the proposed new warranties in Regulation J.

DATES: Comments on the proposed rule must be received not later than May 3, 2005.

ADDRESSES: You may submit comments, identified by Docket No. R–1226, by any of the following methods:

- Agency Web site: *http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.
- FAX: 202/452–3819 or 202/452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Adrianne G. Threatt, Counsel (202/452–3554), or Joshua H. Kaplan, Attorney, (202/452–2249), Legal Division; or Jack K. Walton, II, Assistant Director (202/452–2660), or Joseph P. Baressi, Senior Financial Services Analyst (202/452–3959), Division of Reserve Bank Operations and Payment Systems; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

Background

''Remotely created checks'' typically are created when the holder of a checking account authorizes a payee to draw a check on that account but does not actually sign the check.[1] In place of the signature of the account-holder, the remotely created check generally bears a statement that the customer authorized the check or bears the customer's printed or typed name. Remotely created checks can be useful payment devices. For example, a debtor can authorize a credit card company to create a remotely created check by telephone. This may enable the debtor to pay his credit card bill in a timely manner and avoid late charges. Similarly, a person who does not have a credit card or debit card can purchase an item from a telemarketer by authorizing the seller to create a remotely created check.

On the other hand, remotely created checks are vulnerable to fraud because they do not bear a signature or other readily verifiable indication of authorization. Because remotely created checks are cleared in the same manner as other checks, it is difficult to measure the use of remotely created checks relative to other types of checks. However, there have been significant consumer and bank complaints identifying cases of alleged fraud using remotely created checks.

Existing Law on Remotely Created Checks

A remotely created check is subject to state law on negotiable instruments, specifically Articles 3 and 4 of the Uniform Commercial Code (U.C.C.) as adopted in each state. Under the U.C.C., a paying bank may charge a customer's account for a check only if the check is properly payable. A bank generally must recredit its customer's account for the amount of any unauthorized check it pays.[2] This obligation is subject to limited defenses.[3] In addition, the paying bank may have evidence that the depositor did in fact authorize the check and is suffering buyer's remorse and thus does not have to recredit the amount of the check.[4]

A paying bank may, until midnight of the banking day after a check has been presented to the bank, return the check to the depositary bank if, among other things, the paying bank believes the check is unauthorized. Once its midnight deadline has passed, the paying bank generally cannot return an unauthorized check to the depositary bank.[5]

The provisions of the U.C.C., cited above, reflect the rule set forth in the seminal case of *Price* v. *Neal*[6] that drawees of checks and other drafts must bear the economic loss when the

[1] There is no settled term for these items. The terms ''remotely created check,'' ''telecheck,'' ''preauthorized drafts,'' and ''paper draft'' are among the terms that describe these items. For purposes of this proposal, the Board refers to these items as ''remotely created checks.''

[2] U.C.C. 4–401.

[3] For example, the paying bank may be able to assert that the customer failed to notify the bank of the unauthorized item with ''reasonable promptness'' (U.C.C. 4–406(c) and (d)).

[4] The FTC's Telemarketing Sales Rule prohibits a telemarketer from issuing a remotely created check on a consumer's deposit account without the consumer's express verifiable authorization. The authorization is deemed verifiable if it is in writing, tape recorded and made available to the consumer's bank upon request, or confirmed by a writing sent to the consumer prior to submitting the check for payment. 6 CFR part 310.

[5] *See* U.C.C. 4–301 and 4–302. In limited cases, the paying bank may be able to recover from the presenting bank the amount of a check that it paid under the mistaken belief that the signature of the drawer of the draft was authorized. This remedy, however, may not be asserted against a person that took the check in good faith and for value or that in good faith changed position in reliance on the payment or acceptance. U.C.C. 3–418(a) and (c).

[6] 97 Eng. Rep. 871 (K.B. 1762).

instruments they pay are not properly payable by virtue of the fact that the drawer did not authorize the item.[7] Under the *Price* v. *Neal* rule, the paying bank must bear the economic loss of an unauthorized check with little recourse other than bringing an action against the person that created the unauthorized item. This rule currently applies to all checks, including remotely created checks, in most states.

The *Price* v. *Neal* rule reflects the policy that the paying bank, rather than the depositary bank, is in the best position to judge whether the signature on a check is the authorized signature of its customer. Remotely created checks, however, do not bear a handwritten signature of the drawer that can be verified against a signature card. In most cases, the only means a paying bank would have to verify a remotely created check (and return it if it is unauthorized) is by contacting the customer before the midnight deadline passes. Even if a paying bank wished to verify the authenticity of remotely created checks, however, it must first identify remotely created checks drawn on its accounts. Currently, there is no code or feature of a remotely created check that allows this to be done reliably in an automated manner. For example, remotely created checks bear no machine-readable identifiers that indicate they are remotely created checks.

Recent Legal Changes To Address Remotely Created Checks

Amendments to the U.C.C.

In recognition of the particular problems regarding remotely created checks, the National Conference of Commissioners on Uniform State Laws and the American Law Institute in 2002 approved revisions to Articles 3 and 4 of the U.C.C. that specifically address remotely created checks. The U.C.C. revisions define a remotely created check (using the term ''remotely-created consumer item'') as ''an item drawn on a consumer account, which is not created by the paying bank and does not bear a hand written signature purporting to be the signature of the drawer.''[8] The U.C.C. revisions require a person that transfers a remotely-created consumer item to warrant that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.[9] Accordingly, in the case of remotely-created consumer items the U.C.C. alters the *Price* v. *Neal* rule to provide that the depositary bank and each intermediary bank warrants to the paying bank that the remotely-created consumer item is authorized.[10]

These revisions rest on the premise that it is appropriate to impose the burden of ensuring authorization of a remotely created check on the bank whose customer deposited the remotely created check.[11] The warranty provides an economic incentive for the depositary bank to monitor customers that deposit remotely created checks and should have the effect of limiting the quantity of unauthorized remotely created checks that are introduced into the check collection system.

Amendments to State Laws

Fourteen states have amended their Articles 3 and 4 to include provisions similar to those in the U.C.C.[12] No state, however, has adopted the U.C.C. revisions in their entirety and the revisions adopted by the states are not uniform in their scope or requirements. In addition to the state codes, some check clearinghouses have adopted warranties similar but not identical to the revised U.C.C. that apply to remotely created checks collected through the clearinghouse.

For example, in California, a person that transfers a remotely created check warrants to the transferee that ''creation of the item according to the terms on its face was authorized by the person identified as the drawer.''[13] The California Commercial Code defines a remotely created check as follows:

> a writing not signed by a customer that is created by a third party under the purported authority of the customer for the purpose of charging the customer's account with a bank. A remotely created check shall contain the customer's account number and may contain any or all of the following:
>
> (1) The customer's printed or typewritten name.
>
> (2) A notation that the customer authorized the draft.
>
> (3) The statement ''No Signature Required'' or words to that effect.
>
> A remotely created check shall not include a check purportedly drawn by and bearing the signature of a fiduciary. * * *

Several states use the same warranty language as California, although they define a remotely created check slightly differently, omitting the California statute's requirement that a remotely created check contain the customer's account number. Vermont generally follows the California language; however, Vermont law includes an exception to account for conflict of law rules.[14]

The state-by-state approach to the adoption of remotely created check warranties complicates the trail of liability for remotely created checks collected across state lines, as the bank that presents a check may not be subject to the same rules as the paying bank.

Proposed Rule

The Expedited Funds Availability Act (the EFA Act), Pub. L. 100–86, 101 Stat. 635 (codified at 12 U.C.C. 4001 *et seq.*), authorizes the Board to establish rules regarding losses and liability among depository institutions ''in connection with any aspect of the payment system.''[15] As noted above, the check collection and return system operates nationally. As a result, in order for the remotely created check warranties to be effective and to prevent conflicts among warranties as they apply to banks, the warranties must apply uniformly and nationwide. In connection with its proposed amendments to Regulation CC to implement the Check Clearing for the 21st Century Act (the Check 21 Act), the Board requested comment on whether it should develop a proposal to amend Regulation CC to adopt the U.C.C. warranties for remotely created checks.[16] Seventy-six commenters responded to the Board's request for comment on this issue, and all but two supported the proposal,[17] including the

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[7] *See also Interbank of New York* v. *Fleet Bank,* 730 NYS2d 208 (2001).

[8] U.C.C. 3–103(16).

[9] U.C.C. 3–416(a). A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee with respect to a remotely-created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn. *See also* U.C.C. 4–207(a)(6), 3–417(a)(4), 4–208(a)(4).

[10] Normally, the transferor must warrant only that it has ''no knowledge'' that the instrument is unauthorized. U.C.C. 3–417(a)(3).

[11] U.C.C. 3–416, Official Comment, paragraph 8. The Official Comment notes that the provision supplements FTC's Telemarketing Rule, which requires telemarketers to obtain the customer's ''express verifiable authorization.''

[12] Those states are California, Colorado, Hawaii, Idaho, Minnesota, Nebraska, New Hampshire, North Dakota, Oregon, Tennessee, Utah, Vermont, West Virginia, and Wisconsin.

[13] Cal. U. Com. Code § 3416 (2004).

[14] 9A V.S.A. § 3–416(e).

[15] The Board is authorized to impose on or allocate among depository institutions the risks of loss and liability in connection with any aspect of the payment system, including the receipt, payment, collection, or clearing of checks, and any related function of the payment system with respect to checks. Such liability may not exceed the amount of the check giving rise to the loss or liability, and, where there is bad faith, other damages, if any, suffered as a proximate consequence of any act or omission giving rise to the loss or liability. 12 U.S.C. 4010(f).

[16] 69 FR 1470, 1482, Jan. 8, 2004.

[17] One commenter argued that it would be inappropriate for the Board to adopt the U.C.C. warranty for remotely created checks because it has not yet been adopted by all states. The other commenter stated that it is neither in favor nor opposed to incorporating the U.C.C. warranty but is

Permanent Editorial Board for the U.C.C.[18] In publishing the final amendments to Regulation CC to implement the Check 21 Act, the Board noted its intent to issue a separate proposal regarding remotely created checks.[19]

The Board's proposal defines ''remotely created check'' as a check that is drawn on a customer account at a bank, is created by the payee, and does not bear a signature in the format agreed to by the paying bank and the customer. This definition would include checks that are created by remote payees or their agents to enable payors to make a payment by check.[20]

Unlike the U.C.C. amendments, the Board's proposed definition would apply to remotely created checks drawn on either a consumer or a non-consumer account. Although most remotely created checks are believed to be drawn on consumer accounts, these checks could be drawn on business or other accounts as well. In either case, the depositary bank would appear in the best position to address the potential for fraudulent check writing.

A remotely created check often contains a statement that the customer authorized the check, the customer's printed or typed name, or a similar notation. Generally, a paying bank and its customer agree to a form of authorization for checks drawn on the customer's account. These agreed-upon formats most often take the form of a handwritten signature or a specific type of machine-applied signature. The proposed definition covers remotely created checks that do not bear a signature in the format agreed to between the paying bank and its customer. Accordingly, a check that is created by someone other than the drawer and on which the drawer's signature is applied using the authorization format agreed to by the paying bank and its customer (such as a handwritten signature), is not a remotely created check under the proposal. For example, a typical forged check, such as a stolen personal check fraudulently signed by a person other than the drawer, is not covered by the proposed definition of a remotely created check. In this regard, the existing system of warranties appears suitable for those types of situations because the paying bank can monitor the format and the signatures it has agreed to with its customer.

The Board proposes to create transfer and presentment warranties that would apply to remotely created checks that are transferred or presented by banks to other banks. Under the proposed warranties, any transferor bank, collecting bank, or presenting bank would warrant that the remotely created check that it is transferring or presenting is authorized according to all of its terms by the person on whose account the check is drawn. The proposed warranties would apply only to banks and would ultimately shift liability for the loss created by an unauthorized remotely created check to the depositary bank. A paying bank would not be able to assert a warranty claim under the Board's proposed rule directly against a nonbank payee that created or transferred an unauthorized remotely created check. The proposed transfer and presentment warranties differ in this respect from the U.C.C. provisions, which apply to any person that transfers a remotely created check. However, the bank would likely have a claim under other law against such a payee. The Board's proposal also differs from the U.C.C. provisions to the extent that the Board's proposed warranties cover all of the terms of the check while the U.C.C. provisions cover only authorization of the issuance of the check in the amount for which the check is drawn. The Board is also proposing conforming cross-references to the proposed new warranties in Regulation J.

The Board requests comment on all aspects of the proposed definition of a remotely created check and the scope of the proposed transfer and presentment warranty. In particular, the Board requests comment on how best to distinguish remotely created checks, to which the proposed warranty would apply, from other fraudulent checks, which would not be subject to the proposed warranty. The proposed definition of remotely created check attempts to make this distinction by stating that the check ''does not bear a signature in the format agreed to by the paying bank and the customer.'' A payee that creates an unauthorized remotely created check could circumvent this requirement, however, by applying a handwritten signature purporting to be the signature of a consumer. Similarly, a traditional forged check that contains a signature in a different format than that agreed to by the paying bank and the customer could be subject to the proposed warranty.

There are few statistics or other quantitative data on remotely created checks; therefore, the Board also seeks comment on the prevalence and uses of remotely created checks generally. The Board also requests comment on the general characteristics of remotely created checks, including the manner by which such checks typically reflect the account-holder's authorization. In addition, the Board invites comment on whether it is appropriate to cover all remotely created checks or to follow the U.C.C. approach of covering only remotely-created consumer items.

Additional Requests for Comment

There are other approaches to addressing the risks associated with remotely created checks. The Board invites comment on whether a different approach to addressing this issue is more appropriate. In particular, the Board requests comment on two alternatives.

Extension of the Midnight Deadline

Under the proposal described above, a paying bank would recover its losses caused by an unauthorized remotely created check by making a warranty claim outside of the check collection and return system. As an alternative, the rule could potentially allow such a paying bank to return the unauthorized remotely created check through the check system by extending the U.C.C. midnight deadline for a period of time (such as 60 days). Such a rule could reduce the cost of recovering losses suffered in paying unauthorized remotely created checks and is similar to the return scheme for unauthorized ACH transactions. However, the rule would extend the midnight deadline considerably, and thereby delay finality of payment and discharge of the underlying obligation with respect to remotely created checks. Commenters that favor the extension of the midnight deadline are encouraged to explain their preference for this approach, including how such an approach would be implemented under the current check collection process.

Allow the State Legislatures To Adopt the U.C.C. Amendments

The Board could refrain from or delay acting on the remotely created check issue and allow the states to adopt the U.C.C. warranty, or some variation

unsure how such a warranty in Regulation CC would be enforced.

[18] The Permanent Editorial Board for the U.C.C. stated that the lack of uniform state law ''creates a problem that a remotely-created-items warranty in Regulation CC would resolve. Under the existing non-uniform state of play, a company creating large numbers of these items could avoid the new uniform [U.C.C.] transfer and presentment warranties and continue to insulate itself and its depositary banks by selecting depositary banks in states that have not adopted these warranties.''

[19] 69 FR 47290, 47306, Aug. 4, 2004.

[20] The proposed Commentary would provide that a check created by the payee's agent would be deemed to be created by the payee. Therefore, if a telemarketer hired a service provider to create checks drawn on the accounts of the telemarketer's customers, those checks would be covered by the definition.

thereof, on their own. Check law traditionally has been the province of state law, although a substantial number of Federal laws and regulations apply to the check collection system as well. The pace at which the states have adopted the U.C.C. changes has been slow and that might be an indication that consensus has not been reached on whether there should be a change to the warranties for remotely created checks.

MICR Line Identifier

Regardless of whether the Board provides a special warranty or return rule for remotely created checks, it may be useful to have a means of identifying these checks so that banks can better protect themselves and their customers against fraud. Identifying remotely created checks could be accomplished by assigning digits in the External Processing Code (EPC) Field (commonly referred to as Position 44) of the MICR line to remotely created checks. Four digits would appear to be necessary to identify a forward and return original remotely created check and a substitute check version.

The practical utility of a MICR line code for identifying fraudulent checks may be low in practice, however, because a person depositing an unauthorized remotely created check would be unlikely to place an EPC identifier in the MICR line. Furthermore, requiring a payee, rather than a bank, to encode in position 44 of the MICR line may lead to inconsistent results and operational problems.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.C.C. 3506; 5 CFR part 1320 Appendix A.1), the Board has reviewed the proposed rule under authority delegated to the Board by the Office of Management and Budget. The proposed rule contains one collection of information pursuant to the Paperwork Reduction Act. In addition to the proposed rule, the Board requests comment on whether banks should be required to ensure that a remotely created check includes identifying digits in the MICR line. The MICR line requirement would be deemed a collection of information, however, the Board believes that the paperwork burden associated with such a requirement would be minimal. The Board invites comment on the paperwork burden associated with the MICR line requirement.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA), an agency must publish an initial regulatory flexibility analysis with its proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. (5 U.C.C. 601–612.) The Board believes that, if adopted as proposed, the rule would not have a significant economic impact on a substantial number of small entities.

The RFA requires agencies to examine the objectives, costs and other economic implications on the entities affected by the rule. (5 U.C.C. 603.) Under section 3 of the Small Business Act, as implemented at 13 CFR part 121, subpart A, a bank is considered a ''small entity'' or ''small bank'' if it has $150 million or less in assets. Based on December 2004 call report data, the Board estimates that there are approximately 13,666 depository institutions with assets of $150 million or less. The proposed amendments to Regulation CC create a definition of a remotely created check and warranties that apply when a remotely created check is transferred or presented. The proposed amendments would require any bank that transfers or presents a remotely created check to warrant that the person on whose account the remotely created check is drawn authorized the issuance of the check according to the terms stated on the check. The purpose of the proposed amendments is to place the liability for an unauthorized remotely created check on the bank that is in the best position to prevent the loss. By shifting the liability to the bank in the best position to prevent the loss caused by the payment of an unauthorized remotely created check, the Board anticipates that the proposed amendments will reduce costs for all banks that handle remotely created checks. Banks seeking to minimize the risk of liability for transferring remotely created checks will likely screen with greater scrutiny customers seeking to deposit remotely created checks. The Board believes that the controls that small institutions will develop and implement to minimize the risk of accepting unauthorized remotely created checks for deposit likely would pose a minimal negative economic impact on those entities. The Board invites comment on the economic impact of the proposed warranties on small institutions.

The RFA requires agencies to identify all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule. As noted above, the Board's Regulation J includes cross-references to the warranties set forth in Regulation CC and the proposed rule would amend such cross-references to include the proposed warranties. As also noted above, the proposed rule would overlap with 14 state codes which presently provide warranties for remotely created checks. The RFA also requires agencies to describe any significant alternatives to the proposed rule. The alternatives are discussed above and comment is requested on the proposed alternatives.

List of Subjects in 12 CFR Parts 210 and 229

Banks, Banking, Federal Reserve System, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board is proposing to amend parts 210 and 229 of chapter II of title 12 of the Code of Federal Regulations as set forth below:

PART 210—COLLECTION OF CHECKS AND OTHER ITEMS BY FEDERAL RESERVE BANKS AND FUNDS TRANSFERS THROUGH FEDWIRE (REGULATION J)

1. The authority citation for part 210 continues to read as follows:

Authority: 12 U.S.C. 248(i) and (j), 12 U.S.C. 342, 12 U.S.C. 464, 12 U.S.C. 4001 *et seq.*, 12 U.S.C. 5001–5018.

2. In § 210.5, revise paragraph (a)(3) to read as follows:

§ 210.5 Sender's agreement; recovery by Reserve Bank.

(a) * * *

* * * * *

(3) *Warranties for all electronic items.* The sender makes all the warranties set forth in and subject to the terms of 4–207 of the U.C.C. for an electronic item as if it were an item subject to the U.C.C. and makes the warranties set forth in and subject to the terms of § 229.34(c) and (d) of this chapter for an electronic item as if it were a check subject to that section.

* * * * *

3. In § 210.6, revise paragraph (b)(2) to read as follows:

§ 210.6 Status, warranties, and liability of Reserve Bank.

* * * * *

(b) * * *

(2) *Warranties for all electronic items.* The Reserve Bank makes all the warranties set forth in and subject to the terms of 4–207 of the U.C.C. for an electronic item as if it were an item subject to the U.C.C. and makes the warranties set forth in and subject to the terms of § 229.34(c) and (d) of this

chapter for an electronic item as if it were a check subject to that section.

* * * * *

4. In § 210.9, revise paragraph (b)(5) to read as follows:

§ 210.9 Settlement and payment.

* * * * *

(b) * * *

(5) *Manner of settlement.* Settlement with a Reserve Bank under paragraphs (b)(1) through (4) of this section shall be made by debit to an account on the Reserve Bank's books, cash, or other form of settlement to which the Reserve Bank agrees, except that the Reserve Bank may, in its discretion, obtain settlement by charging the paying bank's account. A paying bank may not set off against the amount of a settlement under this section the amount of a claim with respect to another cash item, cash letter, or other claim under section 229.34(c) and (d) of this chapter (Regulation CC) or other law.

* * * * *

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

5. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001 *et seq.,* 12 U.S.C. 5001–5018.

6. In § 229.2, add a new paragraph (fff) to read as follows:

§ 229.2 Definitions.

* * * * *

(fff) *Remotely created check* means a check that is drawn on a customer account at a bank, is created by the payee, and does not bear a signature in the format agreed to by the paying bank and the customer.

7. In § 229.34, redesignate paragraphs (d), (e), and (f) as paragraphs (e), (f), and (g), and add a new paragraph (d) to read as follows:

§ 229.34 Warranties.

* * * * *

(d) *Transfer and presentment warranties with respect to a remotely created check.*

A bank that transfers or presents a remotely created check and receives a settlement or other consideration warrants to the transferee bank, any subsequent collecting bank, and the paying bank that the person on whose account the remotely created check is drawn authorized the issuance of the check according to the terms stated on the check.

* * * * *

8. In § 229.43, revise paragraph (b)(3) to read as follows:

§ 229.43 Checks Payable in Guam, American Samoa, and the Northern Mariana Islands.

* * * * *

(b) *Rules applicable to Pacific islands checks.* * * *

* * * * *

(3) § 229.34(c)(2), (c)(3), (d), (e), and (f);

* * * * *

9. In Appendix E to part 229:

a. Under paragraph II., § 229.2, paragraph (OO) is revised and a new paragraph (FFF) is added.

b. Under paragraph XX., § 229.34, redesignate paragraphs D., E., and F. as paragraphs E., F., and G., and add a new paragraph D.

APPENDIX E TO PART 229—COMMENTARY

* * * * *

II. Section 229.2 Definitions

* * * * *

OO. 229.2(oo) Interest Compensation

1. This calculation of *interest compensation* derives from U.C.C. 4A–506(b). (*See* §§ 229.34(e) and 229.36(f).)

* * * * *

FFF. 229.2(fff) Remotely Created Check

1. A remotely created check may be drawn on a consumer account or an account held by a corporation, unincorporated company, partnership, government unit or instrumentality, trust, or any other entity or organization. In accordance with principles of the law of agency, an agent of a payee is deemed to be the payee for purposes of the definition of remotely created checks.

2. A check authorized by a consumer over the telephone, which is created by the payee, and which bears a legend on the signature line such as ''Authorized by Drawer'' is an example of a remotely created check. A check that bears the signature of the customer or a signature purporting to be the signature of the customer in the format agreed to by the paying bank and the customer is not a remotely created check. For example, the agreed-upon format is often a handwritten signature, or in the case of corporate checks, a machine-applied signature. In these cases, a check that bears a handwritten or machine-applied signature (regardless of whether the signature was authentic) would not be a remotely created check. A typical forged check, such as a stolen personal check fraudulently signed by a person other than the drawer, is not covered by the definition of a remotely created check.

3. The definition of a remotely created check includes a remotely created check that has been reconverted to a substitute check.

* * * * *

XX. Section 229.34 Warranties

* * * * *

D. 229.34(d) Transfer and Presentment Warranties

1. The transfer and presentment warranties for remotely created checks supplement the Federal Trade Commission's Telemarketing Sales Rule, which requires telemarketers that submit checks for payment to obtain the customer's ''express verifiable authorization'' (the authorization may be either in writing or tape recorded and must be made available upon request to the customer's bank). 16 CFR 310.3(a)(3).

2. Any transferring bank, collecting bank, or presenting bank warrants that the remotely created check that it is transferring or presenting is authorized according to all of its terms by the person on whose account the check is drawn. The warranties are given only by banks and only to subsequent banks in the collection chain. The warranties ultimately shift liability for the loss created by an unauthorized remotely created check to the depositary bank. The depositary bank cannot assert the transfer and presentment warranties against a depositor; however, it would likely have a claim under other laws against that person or could choose to transfer the liability by contract. The transfer and presentment warranties differ from the U.C.C. warranty provisions, which are given by any person that transfers a remotely created check including a nonbank, apply only to remotely created consumer checks, and cover authorization of the issuance of the check in the amount for which the check is drawn.

3. The transfer and presentment warranties for a remotely created check apply to a remotely created check that has been reconverted to a substitute check.

* * * * *

By order of the Board of Governors of the Federal Reserve System, February 28, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–4128 Filed 3–3–05; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19837; Directorate Identifier 2004–CE–43–AD]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Models AT–300, AT–301, AT–302, AT–400, AT–400A, AT–401, AT–402, AT–602, AT–802, and AT–802A 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 Air Tractor, Inc. (Air Tractor) Models AT–300, AT–301, AT–302, AT–400, AT–400A, AT–401, AT–402, AT–602, AT–802, and AT–802A airplanes. This proposed AD would require you to repetitively tighten the four eyebolts that attach the front and rear spar of the horizontal stabilizer to the respective stabilizer strut to the specified torque, and repetitively replace at specified intervals any eyebolts that attach the front and rear spar of the horizontal stabilizer to the respective stabilizer strut. An option for replacing the steel brace assembly inside the stabilizer with a new steel brace assembly with larger bushings and stronger eyebolts that increases the interval for replacement of eyebolts for AT–602, AT–802, and AT–802A airplanes is also included in this proposed AD. This proposed AD results from reports of failures of the subject eyebolt. We are issuing this proposed AD to detect, correct, and prevent future fatigue failure in any eyebolt that attaches the front and rear spar of the horizontal stabilizer to the respective stabilizer strut. Failure of the eyebolt could lead to an abrupt change or complete loss of pitch control and/or the airplane departing from controlled flight.

DATES: We must receive any comments on this proposed AD by May 6, 2005.

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

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

To get the service information identified in this proposed AD, contact Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374.

To view the comments to this proposed AD, go to *http://dms.dot.gov*. The docket number is FAA–2004–19837.

FOR FURTHER INFORMATION CONTACT: Andrew D. McAnaul, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office (ACO), ASW–150, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. Current duty station: San Antonio Manufacturing Inspection District Office (MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; facsimile: (210) 308–3370.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, ''FAA–2004–19837; Directorate Identifier 2004–CE–43–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2004–19837. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

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

Discussion

What events have caused this proposed AD? In December 1985, Snow Engineering Co. issued Service Letter # 62 to recommend the inspection of eyebolts. This was in response to several reports of eyebolt failures on Models AT–301 and AT–400 airplanes.

In response to another failure of an eyebolt on an AT–400 airplane, Snow Engineering Co. issued Service Letter #129 in September 1995. This service letter recommended eyebolt replacement every 2,000 hours time-in-service (TIS) for Models AT–301 and AT–400 airplanes. After a report of an eyebolt failure on a Model AT–602 airplane, Snow Engineering Co. revised Service Letter #129 in November 2003 to recommend replacing eyebolts for Models AT–602, AT–802, and AT–802A airplanes every 1,350 hours TIS.

The FAA also received two service difficulty reports (SDRs) in November 2003. Both SDRs referenced Model AT–802 airplane eyebolt cracks. In December 2003, FAA issued Special Airworthiness Information Bulletin (SAIB) CE–04–23. This SAIB recommended periodic eyebolt replacement following Snow Engineering Co. Service Letter #129.

In April 2004, we received a report of both eyebolts that attach the left hand stabilizer failing in flight on a Model AT–602 airplane. These eyebolts had accumulated 1,675 hours TIS.

Engineering analysis concludes that the eyebolts failed as a result of high-cycle, low-nominal stress. This is most likely due to the loss of torque during service.

Air Tractor has since redesigned the horizontal stabilizer structure for Models AT–802 and AT–602 airplanes to accommodate a new, stronger eyebolt.

Snow Engineering Co. also revised Service Letter #129 with new eyebolt replacement intervals and issued Service Letter #129A to include procedures for optional replacement of the steel brace assembly inside the stabilizer with a new steel brace assembly with larger bushings to accommodate new stronger eyebolts on existing Models AT–602, AT–802, and AT–802A airplanes. This modification provides for increased safety and extends eyebolt replacement intervals.

What is the potential impact if FAA took no action? Failure of an eyebolt could lead to an abrupt change or complete loss of pitch control and/or aircraft departure from controlled flight.

Is there service information that applies to this subject? As discussed earlier, Snow Engineering Co. has issued the following Service Letters:

—Service Letter #129, revised: October 21, 2004; and

—Service Letter #129A, dated August 7, 2004.

What are the provisions of this service information? These service letters include procedures for:

—Service Letter #129 recommends tightening the eyebolt nut to a specified torque, replacing the eyebolt, and includes the inspection procedures when replacing any eyebolt; and

—Service Letter #129A, for certain eyebolts, recommends replacing eyebolts with larger eyebolts, tightening the eyebolt nut to a specified torque, and procedures for replacing the steel brace assembly inside the stabilizer with a new steel brace assembly with larger bushings.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing AD action.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service information.

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

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 1,011 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to do the proposed tightening of the four eyebolt nuts to the specified torque:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $65 per hour = $65	No parts required	$65	$65 × 1,011 = $65,715

We estimate the following costs to do any necessary replacement of the four eyebolts for the Models AT–300, AT–301, AT–302, AT–400, AT–400A, AT–401, AT–402 AT–602, AT–802, and AT–802A airplanes:

Average labor cost	Average parts cost	Average total cost per airplane	Average total cost on U.S. operators
1 workhour × $65 per hour = $65	$186.30	$251.30	1,011 × $251.30 = $254,064.30

We estimate the following costs to do any necessary replacement of the steel brace assembly inside the stabilizer with a new steel brace assembly with larger bushings on existing Models AT–602, AT–802, and AT–802A airplanes:

Average labor cost	Average parts cost	Average total cost per airplane	Average total cost on U.S. operators
22 workhours × $65 per hour = $1,430	$901.65	$2,331.65	312 × $2,331.65 = $727,474.80

Authority for this Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get

a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket FAA–2004–19837; Directorate Identifier 2004-CE–43–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Air Tractor, Inc.: Docket No. FAA–2004–19837; Directorate Identifier 2004–CE–43–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by May 6, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are certificated in any category:

Models	Serial numbers
AT–300, AT–301, AT–302, AT–400, and AT–400A	All serial numbers.
AT–401/AT–402	All through 401–0700.
AT–602	All through 602–0695 that have any 7/16-inch eyebolt (P/N AN47–22A) installed; all beginning with 602–0703; and all that have any 9/16-inch eyebolt (P/N 30774–1) installed.
AT–802 and AT–802A	All through 802A–0188 that have any 7/16-inch eyebolt (P/N AN74–30A) installed; all beginning with 802A–0189; and all that have any 9/16-inch eyebolt (P/N 30775–1) installed.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports of failures of the subject eyebolt. The actions specified in this AD are intended to detect, correct, and prevent future fatigue failure in any eyebolt that attaches the front and rear spar of the horizontal stabilizer to the respective stabilizer strut. Failure of the eyebolt could lead to an abrupt change or complete loss of pitch control and/or the airplane departing from controlled flight.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Tighten the four eyebolts that attach the front and rear spar of the horizontal stabilizer to the respective stabilizer strut using the torque values referenced in Snow Engineering Co. Service Letter #129, revised October 21, 2004.	Within the next 12 calendar months after the effective date of this AD, unless already done. Repetitively tighten thereafter at every 12 calendar months after the date of the initial tightening to the specified torque.	Follow Snow Engineering Co. Service Letter #129, revised October 21, 2004.
(2) Repetitively replace any eyebolts that attach the front and rear spar of the horizontal stabilizer to the respective stabilizer strut.	Initially replace upon accumulating the applicable number of hours time-in-service (TIS) referenced in Snow Engineering Co. Service Letter #129, revised October 21, 2004, or within 50 hours TIS after the effective date of this AD, whichever occurs later. Replace repetitively thereafter at the intervals referenced in Snow Engineering Co. Service Letter #129, revised October 21, 2004.	Follow Snow Engineering Co. Service Letter #129, revised October 21, 2004.
(3) *For Model AT–602 airplanes through serial number 602–0695 and AT–802, and 802A airplanes through serial number 802A–0188:* As an alternative in order to use the increased replacement compliance times in paragraph (e)(2) of this AD, you may replace the steel brace assembly inside the stabilizer with a new steel brace assembly with larger bushings, and. (i) *For the Model AT–602 airplane:* replace any 7/16-inch eyebolt with the 9/16-inch eyebolt (P/N 30774–1). (ii) *For the Model AT–802 and AT–802A airplanes:* replace any 7/16-inch eyebolt with the 9/16-inch eyebolt (P/N 30775–1).	At any time after the effective date of this AD. Use the applicable time in Snow Engineering Co. Service Letter #129A, dated August 7, 2004. The repetitive replacement of paragraph (e)(2) of this AD is still required.	Follow Snow Engineering Co. Service Letter #129A, dated August 7, 2004.

Actions	Compliance	Procedures
(4) Do not install any 5/16-inch eyebolt (P/N AN44–17A or AN44–21A), 7/16-inch eyebolt (AN47–22A or AN47–30A), or 9/16-inch eyebolt (P/N 30774–1 or 30775–1) that exceeds the corresponding cumulative hours TIS specified in paragraphs (e)(2) or (e)(3) of this AD..	As of the effective date of this AD.	Not Applicable.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Fort Worth Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Andrew D. McAnaul, Aerospace Engineer, FAA, Fort Worth Airplane Certification Office (ACO), ASW–150, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. Current duty station: San Antonio Manufacturing Inspection District Office (MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; facsimile: (210) 308–3370.

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

(g) To get copies of the documents referenced in this AD, contact Air Tractor, Incorporated, P.O. Box 485, Olney, Texas 76374. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, S.W., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–19837.

Issued in Kansas City, Missouri, on February 28, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–4238 Filed 3–3–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19354; Directorate Identifier 2004–CE–30–AD]

RIN 2120–AA64

Airworthiness Directives; Precise Flight, Inc. Models SVS I and SVS IA Standby Vacuum Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all airplanes equipped with Precise Flight, Inc. (Precise Flight) Models SVS I and SVS IA standby vacuum systems (SVS) installed under certain supplemental type certificates or through field approval. This proposed AD would require you to replace the airplane flight manual supplement (AFMS) in the airplane flight manual with the appropriate revision and install placards as defined in the AFMS, upgrade the Model SVS I or SVS IA SVS to the Model VI SVS, and add the instructions for continued airworthiness (ICA) to the maintenance schedule for the aircraft. This proposed AD results from several reports of failed shuttle control valves of the standby vacuum system (SVS) and one report of an airplane crash with a fatality in which improper use of the SVS was a factor. We are issuing this proposed AD to correct problems with the SVS before failure or malfunction during instrument flight rules (IFR) flight that can lead to pilot disorientation and loss of control of the aircraft.

DATES: We must receive any comments on this proposed AD by April 29, 2005.

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

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

To get the service information identified in this proposed AD, contact Precise Flight, Inc., 63120 Powell Butte Road, Bend Oregon 97701, telephone: (800) 547–2558; facsimile: (541) 388–1105; electronic mail: *preciseflight@preciseflight.com*; Internet: *http://www.preciseflight.com/.*

To view the comments to this proposed AD, go to *http://dms.dot.gov.* The docket number is FAA–2004–19354.

FOR FURTHER INFORMATION CONTACT: Ms. Marcia Smith, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4065; telephone: (425) 917–6484; facsimile: (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, ''FAA–2004–19354; Directorate Identifier 2004–CE–30–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association,

business, labor union, etc.). This is docket number FAA–2004–19354. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

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

Discussion

What events have caused this proposed AD? The FAA has received several reports of problems on aircraft equipped with a Precise Flight, Inc. standby vacuum system (SVS). In particular, the reports show 14 incidents of failed shuttle control valves and one report of an airplane crash with a fatality where improper use of the SVS was a factor that caused us to issue AD 99–24–10, Amendment 39–11434 (64 FR 66747, November 30, 1999). AD 99–24–10 currently requires the following on all aircraft equipped with Precise Flight, Inc. Model SVS III standby vacuum systems installed under the applicable supplemental type certificate (STC) or through field approval:

—Incorporate revised operating limitations for the affected SVS into the airplane flight manual (AFM);

—Inspect (repetitively) the push-pull cable, vacuum lines, saddle fittings, and shuttle valve for correct installation and damage (wear, chafing, deterioration, and so forth); and

—Correct any discrepancy found and conduct a function test of the vacuum system after the inspections.

The SVS is intended to provide emergency vacuum power for aircraft instruments when the primary vacuum system fails. The design of the Precise Flight, Inc. Models SVS I and SVS IA SVS is similar to the Model SVS III SVS, and so it may not be able to provide sufficient vacuum power to correctly measure altitude and operate the vacuum instruments. The upgrade of the Models SVS I or IA SVS to the Model SVS VI SVS provides sufficient vacuum power to correctly measure altitude and operate the vacuum instruments.

Failure of the SVS in instrument flight rules (IFR) can lead to the pilot making incorrect decisions based on the data received from the instruments with consequent loss of control of the aircraft.

The Precise Flight, Inc. Models SVS I and SVS IA SVS are installed on aircraft through a supplemental type certificate (STC) or through field approval. The Applicability section of the proposed AD lists the applicable STCs and aircraft that could have these SVS installed. This list is not meant to be exhaustive nor does it include all aircraft with the systems installed through field approval.

What is the potential impact if FAA took no action? Failure or malfunction of the SVS during IFR flight can lead to pilot disorientation and loss of control of the aircraft.

Is there service information that applies to this subject? Precise Flight, Inc. has issued Installation Report No. 08080, Standby Vacuum System Model VI—Shuttle Valve S/N 10243 & Subsequent (Manual Valve), Revision A, dated February 21, 2001. This report provides instructions for the upgrade of the Models SVS I or SVS IA SVS to the Model VI SVS; and includes procedures for upgrading to the Model SVS VI SVS.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For this reason, we are proposing AD action.

What would this proposed AD require? This proposed AD would require you to replace the airplane flight manual supplement (AFMS) in the airplane flight manual with the appropriate revision and install placards as defined in the AFMS, upgrade the Model SVS I or SVS IA SVS to the Model VI SVS, and add the instructions for continued airworthiness (ICA) to the maintenance schedule for the aircraft.

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

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 800 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to replace the airplane flight manual supplement (AFMS) in the airplane flight manual with the appropriate revision. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
1 work hour × $65 = $65	None	$65

We estimate the following costs to do any upgrade to the Model SVS VI SVS, install placards, and add the installation report including the instructions for continued airworthiness (ICA) to the maintenance schedule for the aircraft. We have no way of determining the number of airplanes that may need this upgrade:

Labor cost	Parts cost	Total cost per airplane
3 work hour × $65 = $195	$77	$272

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket FAA–2004–19354; Directorate Identifier 2004–CE–30–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Precise Flight, Inc.: Docket No. FAA–2004–19354; Directorate Identifier 2004–CE–30–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by April 29, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Models SVS I and SVS IA standby vacuum systems (SVS), installed on, but not limited to, the following aircraft that are certificated in any category. These systems can be installed under the applicable supplemental type certificate (STC) or through field approval:

Affected STC	Make and model/series aircraft
SA2160NM	Raytheon Beech Models 23, A23, A23A, A23–19, 19A, B19, B19A, A23–24, B23, C23, A24, A24R, B24R, C24R, 35, A35, B35, C35, D35, E35, F35, G35, 35R, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, 35–33, 35–A33, 35–B33, 35–C33, 35–C33A, E33, E33A, E33C, F33, F33A, F33C, G33, 36, A36, A36TC, B36TC, 4S(YT–34), A45(T–34A, B–45), D45(T–34B), and Series 77.
SA2161NM	Raytheon Beech Model V35B.
SA2162NM	The Cessna Aircraft Company Models 321 (Navy OE–2), 172N, 172P, 172D, 172M, 172L, 172I, 172H (USAF T–41A), 172F (USAF T–41A), 172E, 172C, 172, 172Q, 172B, TR182, T182, 305B (Military T0–1D, 0–1D, 0–1F), R172E Series, 175C, 175B, 175A, R172F (USAF T–41D), P172D, 150, 150A, 150C, 150B, 150D, A152, A150M, 150M, 152, A150L, 150K, 150J, 150H, 150G, 150F, 210–5 (205), 210–5A (205A), T210R, P210R, T210N, 210N, P210N, 210M, T210L, 210K, T210K, 210J, T210H, 210H, T210G, T210F, 210F, 210D, 210C, 210B, 210A, 210L, 210, A185F, A185E, 185E, 185C, 185B, 185A, 185, 140A, 305A (USAF 0–1A), 305C (USAF 0–1E), 305D (USAF 0–1G), 305F, 120, 170B, 170A, 170, 207A, T207, 207, 206, P206B, P206, P206C, TU206A, TU206G, TU206E, TU206C, P206D, U206G, U206F, U206E, U206D, U206C, U206A, TP206E, TP206D, TP206C, TP206A, P206E, TU206D, T188C, A188B, A188, 188A, and 188.
SA2164NM	The Cessna Aircraft Company Model 180A.
SA2167NM	The New Piper Aircraft, Inc. Models PA–16S and PA–16, Series PA–24, Models PA–24–400, PA–24–250, PA–24, PA–24–260, PA–18S–''135'', PA–18''105'' (Special), PA–18AS–''135'', PA–18A–''135'', PA–18–''150'', PA–19S, PA–19 (Army L–18C), PA–18S–''150'', and PA–18–''135'' (Army L–21B), Series PA–18, Models PA–18–''125'' (Army L–21A), PA–18S, PA–18A, PA–18, and PA–18S–''125'', Series PA–19 and PA–20, Models PA–20, PA–20S, PA–20–''135'', PA–20–''115'', and PA–22S–160, Series PA–22, Models PA–22–160, PA–22S–150, PA–22–150, PA–22, PA–22–108, PA–22–135, and PA–22S–135, Series PA–28, Model PA–28R–200, Series PA–28S and PA–28R, Models PA–28–236, PA–28–201T, PA–28R–180, PA–28RT–201T, PA–28RT–201, PA–28R–201, PA–28–181, PA–28S–180, PA–28R–201T, PA–28S–160, PA–28–235, PA–28–180, PA–28–161, PA–28–160, PA–28–151, PA–28–150, and PA–28–140, Series PA–25 (Normal Category (Cat.)), Models PA–25–260 (Normal Cat.), PA–25–235 (Normal Cat.), PA–25 (Normal Cat.), L–14, PA–12S, PA–12, PA–14, PA–15, PA–17, PA–38–112, PA–46–310P, and PA–32–260, Series PA–32 and PA–32R, Models PA–32–300, PA–32–301T, PA–32–301, PA–32R–301T, PA–32R–301(HP), PA–32R–301(SP), PA–32RT–300T, PA–32RT–300, PA–32R–300, and PA–32S–300, Series PA–36, Models PA–36–375 (Normal Cat.), PA–36–300 (Normal Cat.), and PA–36–285 (Normal Cat.).
SA2168NM	Learjet Inc. Model Learjet 24D.
	Mooney Aircraft Corporation Models M20C, M20M, M20K, M20J, M20G, M20B, M20A, M20, M20F, M20E, and M22.

Affected STC	Make and model/series aircraft
SA2683NM	Aermacchi S.p.A. Models F.260, F.260B, S.205–22/R, S.205–18/F, S.205–18/R, S.205–20/F, S.205–20/R, S.208A, and S.208. Aerocar, Incorporated Model I. Aerodifusion, S.L. Model Jodel D–1190S. Aeromere S.A. Model Falco F.8.L. Aeronautica Macchi S.p.A. Models AL60, AL60–B, AL60–F5, and AL60–C5. Aeronautica Macchi S.p.A. & Aerfer-Industrie Aerospaziali Meridionali S.p.A. Model AM–3. Aeronca Aircraft Corporation Models S15AC and 15AC. Ag Cat Corporation Models G–164B, G–164, and G–164A. Alliance Aircraft Group, LLC Models H–395 (USAF L–28A or U–10B), H–250, H–295 (USAF U–10D), HT–295, H–391 (USAF YL–24), H–391B, H–700, and H–395A. American Champion Aircraft Corp. Models 7AC, 7FC, 7ACA, S7AC, 7BCM (L–16A), 7CCM (L–16B), 7DC, S7DC, 7EC, S7EC, 7ECA, 7GC, 7GCA, 7GCAA, 7GCB, 7GCBA, 7GCBC, 7HC, 7JC, 7KC, 7KCAB, 11BC, S11AC, S11BC, 11AC, 11CC, S11CC, 8KCAB, and 8GCBC. Arctic Aircraft Company, Inc. Models S–1A, S–1A–65F, S–1A–85F, S–1A–90F, S–1B2, S–1B1 (Army L–6), and S–1B1 (Army XL–6). Augustair, Inc. Models 2150A, 2180, and 2150. Avions Jodel Models D–1190, 150, D–140–B, and DR–1050. Bellanca Aircraft Corporation Models 14–19–2, 14–19–3A, 17–30, 17–31, 17–31TC, 14–9, 14–9L, 14–12F–3, 14–13, 14–13–2, 14–13–3, 14–13–3W, 17–30A, 17–31A, and 17–31ATC. Biemond, C. Model Teal CB1. Board, G.R. Model Columbia XJL–1. Booth, Lee F. dba Taylorcraft Aerospace Models F21, F21A, and F19. Chaparral Motors, Inc. Models 2T–1A–1 and 2T–1A–2. Clark Aircraft, Inc. Models 12 and 1000. Commander Aircraft Company Models 114A, 112, 112B, 112TCA, 114, and 112TC. C. Itoh Aircraft Maintenance and Engineering Co., Ltd. Model N–62. DaimlerChrysler Aerospace AG Models Bolkow Jr., BO–209–150. FV & RV, BO–209–160 FV & RV, and BO–209–150 FF. Flugzeugwerke Altenrheim AG (FFA) Model AS 202/15 "BRAVO". Found Brothers Aviation Limited Model FBA–2C. Fuji Heavy Industries, Ltd. Models FA–200–180AO, FA–200–180, and FA–200–160. Funk Aircraft Company Model Funk C. Goodyear Aircraft Corporation Model GA–22A. Gulfstream Aerospace Corporation Model 111. Jamieson Corporation, The Model J–2–L1B. Kearns, Edward Scott Model Trojan A–2. Luscombe Aircraft Corporation Model 11A. Luscombe, The Don, Aviation History Foundation, Inc. Models T–8F, 8A, 8E, 8D, 8B, 8, 8F, and 8C. Maule Aerospace Technology, Inc. Models Bee Dee M–4–210, Bee Dee M–4–180S, Bee Dee M–4–180C, Bee Dee M–4T, Bee Dee M–4–210S, Bee Dee M–4S, Bee Dee M–4–210T, Bee Dee M–4–210C, Bee Dee M–4–220S, Bee Dee M–4–220T, Bee Dee M–5–180C, Bee Dee M–5–200, Bee Dee M–5–210TC, Bee Dee M–7–235, Bee Dee M–6–235, Bee Dee M–4C, Bee Dee M–5–220C, Bee Dee M–5–235C, Bee Dee M–6–180, Bee Dee M–5–210C, Bee Dee MX–7–235, Bee Dee M–4, MX–7–160C, Bee Dee M–7 Series, Bee Dee MXT–7–180, Bee Dee MT–7–235, Bee Dee M–8–235, Bee Dee MX–7–160, Bee Dee MXT–7–160, Bee Dee MX–7–180A, Bee Dee MXT–7–180A, Bee Dee MX–7–180B, Bee Dee M–7–235B, Bee Dee M–6 Series, Bee Dee MX–7 Series, Bee Dee M–7–235C, Bee Dee M–4 Series, Bee Dee M–8 Series, Bee Dee MX–7–180C, Bee Dee M–7–260C, M–7–260, MT–7–260, Bee Dee MX–7–180, and Bee Dee M–7–235A. Nardi S.A. Model FN–333. Navion Aircraft Company, Ltd. Models Navion (L–17A), Navion A (L–17B), Navion A (L–17C), Navion B, Navion D, Navion E, Navion F, Navion G, and Navion H. Procaer Progetti Costruzioni Aeronautiche Models F 15/C, F 15/B, and F 15/E. Prop-Jets, Inc. Models 200, 200A, 200B, 200C, and 200D. REVO, Incorporated Models Lake LA–4–200, Colonial C–1, Colonial C–2, Colonial Lake Model 250, and Lake LA–4. Sky International Inc. Models S–1S, S–2A, S–2, and S–1T. SOCATA—Groupe Aerospatiale Models MS880B, MS885, MS892A–150, MS892E–150, MS893A, MS893E, MS894A, MS894E, TB10, TB20, TB21, and TB9. Sud Aviation Models Gardan GY.80–160, Gardan GY.80–150, and Gardan GY.80–180. Swift Museum Foundation, Inc. Models GC–1A and GC–1B. Tiger Aircraft LLC Models AA–1, AA–1A, AA–1B, AA–1C, AA–5, AA–5A, and AA–5B. Univair Aircraft Corporation Models 415–C, 415–CD, 108–2, 108–3, and F–1. Univair Aircraft Corporation Models F–1A, E, 415D, M10, A–2–A, and A–2. Wright, Jr., Elzie Model F–1.
SE1779NM	Textron Lycoming, AVCO Corporation Series IGO–540, IO–320, IGSO–540, O–290, GSO–580, O–320, IGO–480, GO–480, GSO–435, O–435, SO–580–A1A, SO–580–A1B, SO–580, O–540, VO–540, TIO–541, TIO–360, TO–360, and LTO–360.
SE1780NM	Curtiss-Wright Corporation Models A70 and A70–2. Teledyne Continental Motors Series TSIO–470, A–65, A–75, C75, C–125, C–115, Models A100–1 and A100–2, Series E–165, E–185, O–200, C90, C145, O–300, E–225, O–470, IO–470, Models FSO–470A, FSO–526A, FSO–526–C, Series GO–300, Models GSO–526–A and 6–260–A, Series IO–360, Models 6–320–B, GIO–470–A, T6–320–A, IO–346–B, and IO–346–A, Series IO–520, GTSIO–520, TSIO–520, TSIO–360, and LTSIO–360.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of several reports of failed shuttle control valves of the SVS and one report of an airplane crash with a fatality in which improper use of the SVS was a factor. The actions specified in this AD are intended to correct problems with the SVS before failure or malfunction during instrument flight rules (IFR) flight that can lead to pilot disorientation and loss of control of the aircraft.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Incorporate the airplane flight manual supplement (AFMS) in the airplane flight manual with the appropriate revision in the FAA-approved airplane flight manual (AFM). (i) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may do the flight manual changes requirement of this AD. (ii) Make an entry in the aircraft records showing compliance with this portion of the AD following section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Within 30 days after the effective date of this AD, unless already done.	Not Applicable.
(2) Install placards described in the AFMS	Before further flight after incorporating the AFMS in the FAA-approved airplane flight manual (AFM) required by paragraph (e)(1) of this AD.	Follow the Standby Vacuum System AFM SUPPLEMENT, dated February 4, 2000.
(3) Upgrade the Model SVS I or SVS IA SVS to the Model SVS VISVS, install the appropriate placards, and add the installation report including the instructions for continued airworthiness (ICA) to the maintenance schedule for the aircraft.	Within 1 year after the effective date of this AD, unless already done.	Follow Precise Flight, Inc. Installation Report No. 08080, Standby Vacuum System Model VI—Shuttle Valve S/N 10243 & Subsequent (Manual Valve), Revision A, dated February 21, 2001.
(4) Do not install any Model SVS I or SVS IA SVS without also doing the actions required by paragraphs (e)(1), (e)(2) and (e)(3) of AD.	As of the effective date of this this AD	Not applicable.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Seattle Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Ms. Marcia Smith, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW, Renton, Washington 98055–4065; telephone: (425) 917–6484; facsimile: (425) 917–6590.

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

(g) To get copies of the documents referenced in this AD, contact Precise Flight, Inc., 63120 Powell Butte Road, Bend Oregon 97701, telephone: (800) 547–2558; facsimile: (541) 388–1105; electronic mail: *preciseflight@preciseflight.com*; Internet: *http://www.preciseflight.com/*. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, S.W., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–19354.

Issued in Kansas City, Missouri, on February 23, 2005.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–4239 Filed 3–3–05; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 240 and 274

[Release Nos. 33–8544; 34–51274; IC–26778; File No. S7–06–04]

RIN 3235–AJ11; 3235–AJ12; 3235–AJ13; 3235–AJ14

Point of Sale Disclosure Requirements and Confirmation Requirements for Transactions in Mutual Funds, College Savings Plans, and Certain Other Securities, and Amendments to the Registration Form for Mutual Funds

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; reopening of comment period and supplemental request for comment.

SUMMARY: The Securities and Exchange Commission (''Commission'') is reopening the comment period on proposed rules, published in January 2004, that would require broker-dealers to provide their customers with information regarding the costs and conflicts of interest that arise from the distribution of mutual fund shares, 529 college savings plan interests, and variable insurance products. The Commission also is supplementing its request for comments on the proposed rules to reflect issues raised by commenters, including feedback received from investors in in-depth interviews about revised forms for disclosing information at the point of sale. The Commission is publishing this supplemental request for comment and reopening the comment period to assure that the public has a full opportunity to address such issues in their comments.

DATES: Comments should be submitted on or before April 4, 2005.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–06–04 on the subject line; or

• Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. All submissions should refer to File Number S7–06–04. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments also are available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: With respect to Securities Exchange Act Rules 10b–10, 15c2–2, and 15c2–3, contact Catherine McGuire, Chief Counsel, Paula R. Jenson, Deputy Chief Counsel, Joshua S. Kans, Branch Chief, David W. Blass, Branch Chief, or John J. Fahey, Attorney, at (202) 942–0073, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

With respect to Form N–1A, contact Deborah Skeens, Senior Counsel, at (202) 942–0721, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION:

I. Introduction

On January 29, 2004, the Commission issued, and requested comment on, two proposed new rules, as well as rule amendments under the Securities Exchange Act of 1934 designed to enhance the information broker-dealers provide to their customers in connection with transactions in certain types of securities.[1] Proposed rules 15c2–2 and 15c2–3 would require broker-dealers to provide their customers with targeted information, at the point of sale and in transaction confirmations, regarding the costs and conflicts of interest that arise from the distribution of mutual fund shares, 529 college savings plan interests[2], and variable insurance products (collectively, ''covered securities''). The Commission also proposed conforming amendments to rule 10b-10, its general confirmation rule, as well as amendments to that rule to provide investors with additional information about call features of debt securities and preferred stock. Finally, the Commission proposed amendments to Form N–1A, the registration form for mutual funds, to improve disclosure of sales loads and revenue sharing payments.[3]

We received over one thousand separate comments on the proposed rules and rule amendments, as well as over four thousand comments from individuals and entities using a variety of standard letter types.[4] Because proposed rules 15c2–2 and 15c2–3 were intended to provide clear and useful disclosure to investors, we actively encouraged comments from individual investors and investor groups. We also met with numerous investor groups, and engaged a consultant to assist in investor testing of possible forms for confirmation and point of sale disclosures.

The comments and other feedback we received suggest a number of areas where the proposed point of sale and confirmation disclosure requirements may need to be revised to more effectively communicate information to investors, while more efficiently balancing the benefits of disclosure against the costs of compliance. In addition, some feedback suggests that we should consider taking a more layered approach to disclosure by requiring broker-dealers to use the Internet as a disclosure medium to supplement point of sale and confirmation disclosure.

Section II of this release discusses possible improvements to the proposed point of sale disclosure rule for transactions in covered securities. Section III discusses possible improvements to the proposed confirmation disclosure rule for transactions in covered securities. Section IV discusses the possible requirement for broker-dealers to disclose detailed information about revenue sharing payments and other broker compensation practices on the Internet. Section V discusses possible changes to the prospectus disclosure of revenue sharing. Section VI contains a general request for comments on this release and also renews our request for comments on the proposals in the Proposing Release.[5]

II. Point of Sale Proposal

Proposed rule 15c2–3 was intended to improve investment decisionmaking by providing investors at the point of sale with information about costs and conflicts of interest associated with purchases of covered securities. Comments and investor feedback indicated, however, that while point of sale disclosure may be quite useful to investors, there are a number of areas that could be enhanced to make the proposed rule more effective. These include: (a) The content and format of the disclosure that would be required under the proposed rule, including the disclosure of ''management fees'' and ''other expenses'' of the covered security; (b) the manner in which oral point of sale disclosures would be made; (c) the timing of delivery of point of sale disclosures; (d) exceptions to the requirement to deliver point of sale disclosures; and (e) special issues related to variable insurance products. We seek additional comment about these key areas, as detailed below.

A. Content and Format of Proposed Point of Sale Disclosure for Covered Securities

1. Brief Summary of Select Comments to the Proposing Release Relating to Point of Sale Disclosure

We received substantial feedback on the point of sale forms that would be required under proposed rule 15c2–3. Some investors were confused by the use of industry jargon, such as ''sales loads'' and ''revenue sharing,'' in the forms attached to the Proposing Release.

[1] *See* Securities Exchange Act Release No. 49148 (January 29, 2004), 69 FR 6438 (February 10, 2004) (''Proposing Release'').

[2] College savings plans are often referred to as ''529 savings plans.''

[3] In the Proposing Release, and on the forms attached to the Proposing Release, we used the term ''revenue sharing'' to refer to payments to broker-dealers for promoting certain covered securities over others. However, investor feedback indicated that the term ''revenue sharing'' is not easily understandable. While we continue to refer to the term ''revenue sharing payment'' in this release, we have removed references to ''revenue sharing'' from the forms attached to this release and instead refer to payments broker-dealers receive for promoting certain covered securities over others. *See infra* part II.A.3.

[4] The full text of comments to the proposal, including the text of standard letter types, is publicly available at: *http://www.sec.gov/rules/proposed/s70604.shtml*.

[5] In the Proposing Release, we proposed rule language to require confirmation disclosure of comparative information about certain costs and conflicts. This release does not address those proposed requirements, given that the content of comparison information and the form of disclosure (*e.g.*, at the point of sale versus in confirmations) in large part will depend upon any final point of sale and confirmation requirements. At a later date and in a separate release, we plan to request further comments about comparison range disclosure requirements.

Some stated that the definitions and explanatory materials were not as useful as they would have liked. Others stated that the forms did not adequately differentiate one-time costs from ongoing costs.[6] Also, many investors wanted point of sale disclosure to provide comprehensive information about all the costs of owning covered securities, not just distribution-related costs. They sought comprehensive information about ownership costs, in percentage terms and in dollar terms, to better inform them about the total costs associated with purchasing and owning these securities.[7]

Some securities industry commenters urged the Commission to revisit the proposed requirement that point of sale disclosure be specific to the anticipated amount of the customer's transaction, stating that such quantified disclosure would be difficult and costly to provide. Some saw standardized point of sale disclosure as preferable to transaction-specific disclosure and some viewed point of sale disclosure as overly time-consuming for broker-dealers to deliver, particularly over the telephone.

Some commenters suggested specific changes to the wording and layout of the proposed point of sale forms, and provided alternative forms for us to consider.[8] In addition, we received several comments about the proposed ''yes or no'' point of sale disclosure of whether a broker-dealer or its affiliates receive revenue sharing from a person within a fund complex. The disclosure requirement, including proposed definitions of ''revenue sharing'' and ''fund complex,'' in general would have required a broker-dealer to disclose whether it receives certain payments from affiliates of the issuer of the covered security, but not from the issuer itself. Disclosure about special compensation arrangements was intended to alert customers to those conflicts of interest and promote further inquiry.

One commenter suggested that the disclosure requirement relating to revenue sharing should be more focused, stating that the proposal would encompass payments unrelated to the distribution of covered securities purchased by a customer.[9] Commenters also expressed concern that the provisions of the proposed rules relating to revenue sharing would lead to inconsistent disclosure depending upon how payments are depicted by a fund complex, particularly in light of the proposed exclusion for payments by issuers.[10] Some commenters also suggested that such payments merely constitute ''cost sharing'' by which fund families compensate broker-dealers for services that the fund families otherwise would incur.[11]

2. Revised Point of Sale Disclosure Forms

In response to the comments we received to the Proposing Release, we sought feedback from investors and have developed revised forms that we are considering adopting.[12] Broker-dealers would be required to deliver these proposed new forms at the point of sale before a customer purchases a covered security. Consistent with investors' views that disclosure should be targeted and should exclude irrelevant information, broker-dealers would not use a ''one size fits all'' form to provide written point of sale disclosure to customers. Instead, while broker-dealers would have to disclose specific categories of information in a required format to the extent those categories are applicable, the written point of sale forms would omit categories of information that are not applicable to a particular purchase.[13] This targeted approach would limit ''information overload''—which can undercut the effectiveness of highly detailed disclosure—and also would facilitate disclosure of special costs associated with particular securities.[14] It therefore should lead to disclosure that is as standardized as possible, while targeted enough to be useful to a wide range of investors. We would hope that investors would request, and broker-dealers would provide, forms for different share classes where applicable and where consistent with suitability obligations, in order to help investors make informed investment decisions.

Consistent with those principles, the forms in Attachments 1–6 reflect feedback we have received through investor outreach about how to improve the clarity and readability of the forms, as well as additional analysis about how to improve their cost-effectiveness.[15] Attachments 1–3 show proposed new ''models'' of required point of sale disclosure forms filled in for a hypothetical mutual fund,[16] with the

[6] AARP conducted its own investor testing, which further indicated that the proposed disclosure form was not effective in communicating information to many investors.

[7] While many investors recognized that dollar-based disclosure of future annual costs is hypothetical in nature, in that these costs would vary over time, they nonetheless concluded that such dollar-based disclosure would help them make better investment decisions. Consumer advocates also supported this change, stating that point of sale disclosure that failed to include information about fund management fees and other non-distribution costs could cause some investors to mistakenly believe that those additional costs of ownership are not present.

[8] *See* Letter from Mary L. Shapiro, Vice Chairman, NASD, and President, Regulatory Policy and Oversight, NASD, to Jonathan G. Katz, Secretary, Commission, dated May 4, 2004; Letter from Mary L. Shapiro, Vice Chairman, NASD, and President, Regulatory Policy and Oversight, NASD, to Jonathan G. Katz, Secretary, Commission, dated August 20, 2004; Letter from Mike Scafati, Senior Vice President, A.G. Edwards & Sons, Inc., dated April 12, 2004; Letter from William Lutz, Professor of English, Rutgers University, to Jonathan G. Katz, Secretary, Commission, dated April 12, 2004; Letter from Nancy M. Smith to Jonathan G. Katz, Secretary, Commission, dated April 12, 2004; Letter from Nancy M. Smith to Jonathan G. Katz, Secretary, Commission, dated April 22, 2004; Letter from Amy B.R. Lancellotta, Acting General Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission, dated April 12, 2004; Memorandum from the Division of Market Regulation regarding a meeting with representatives of the Investment Company Institute, dated October 26, 2004; and Memorandum from the Division of Market Regulation regarding a meeting with representatives of the Securities Industry Association, dated October 26, 2004.

[9] Some commenters also stated that the proposed disclosure requirement should not encompass payments that a broker-dealer receives for underwriting state bonds, or payments received by banks that are affiliated with broker-dealers, or certain payments that broker-dealers receive from affiliated fund complexes.

[10] That particularly may be an issue with regard to payments received by fund ''supermarkets'' operated by certain broker-dealers.

[11] Regardless of the characterization, a broker-dealer's receipt of special payments from some fund complexes but not others gives the broker-dealer monetary incentives to promote the sale of securities of the fund complexes that make those payments. That is true even if the payments solely reimburse the broker-dealer for sales and servicing costs it incurs.

[12] The Commission retained Siegel & Gale, LLC and Gelb Consulting Group, Inc. to help develop and test model disclosure forms that would effectively convey information to investors. *See* Siegel & Gale, LLC/Gelb Consulting Group, Inc., ''Results of In-Depth Investor Interviews Regarding Proposed Mutual Fund Sales Fee and Conflict of Interest Disclosure Forms: Report to the Securities and Exchange Commission,'' (November 4, 2004) and ''Supplemental Report to the Securities and Exchange Commission'' (November 29, 2004) (together, the ''Siegel & Gale/Gelb Consulting Report''). The report is available at *http://www.sec.gov/rules/proposed/s70604/rep110404.pdf* and the supplemental report is available at *http://www.sec.gov/rules/proposed/s70604/sup-rep010705.pdf.*

[13] Thus, for example, a customer contemplating buying class A mutual fund shares with an upfront sales fee would receive a form that would reflect that upfront fee in a standardized format, but a broker-dealer would not be required to include information about deferred sales fees, which are not applicable to class A shares.

[14] As discussed below, those special costs may include, among others, account opening fees imposed by the issuers of college savings plans, or purchase or redemption fees imposed by funds.

[15] This section discusses generally the proposed new point of sale disclosure forms for all covered securities. We recognize, however, that variable insurance products have special disclosure issues. We discuss additional forms more appropriate to those products in part II.E.

[16] The proposed new ''model'' forms in Attachments 1–3 and 4–6 depict how the required forms would be filled in for hypothetical mutual funds or 529 savings plans, respectively.

differences among the forms reflecting differences in share classes and other pricing attributes. Attachments 4–6 show proposed new ''models'' for the required point of sale disclosure forms filled in for a hypothetical 529 savings plan, again reflecting differences in pricing. Following is a summary of some of the key aspects of these forms:

a. *Clarity of the forms.* We believe that the forms in Attachments 1–6 are clearer and easier to understand than the point of sale forms attached to the Proposing Release. Where possible, we have used plain English in the forms, rather than using industry jargon. In addition, broker-dealers would be required to deliver forms in the same format, including font size and layout, as that of Attachments 1–6.

b. *Identification of security subject to disclosure.* Broker-dealers would be required to more clearly identify the security subject to disclosure in the forms. For example, in the case of mutual funds, this would include the disclosure of the fund's ticker symbol (if applicable). In the case of 529 savings plans, this would include disclosure of the specific age-based or other portfolio within the plan, if applicable, and the name of the state that sponsors the plan, if that name otherwise would not be identified. Disclosure of point of sale information for 529 savings plan interests also would include brief text reminding customers to consider the potential tax benefits of investing in the plan of their home state.

c. *Combined use of standardized and transaction-specific cost disclosure.* Costs associated with investments in covered securities would be shown using standardized $1,000, $50,000 and $100,000 payment or investment amounts. In addition, if a customer requests at the point of sale, broker-dealers would be required to use ''fill in the blank'' boxes to disclose cost information reflecting the customer's anticipated payment amount.[17]

d. *Presentation of sales fee disclosure.* Based on the standardized payment amounts (for securities with an upfront sales fee)[18] or investment amounts (for other securities), broker-dealers would be required to disclose on the forms sales fees in dollars and as a percentage of the amount invested.[19] For securities with an upfront sales fee, the forms would contain an additional column for the net amount invested. Broker-dealers would be required to disclose the back end sales fee on the form as a ''maximum'', reflecting the highest back end fee a customer could expect to pay if the investment did not appreciate or depreciate.[20] Broker-dealers would also be required to disclose on the forms a brief statement about the possible availability of breakpoint discounts, referred to on the forms as ''volume discounts.''

e. *Comprehensive annual cost disclosure.* In the Proposing Release, we proposed to require broker-dealers to disclose only distribution-related costs. However, in response to the comments and investor testing described above, we now propose to require broker-dealers to disclose on the proposed new forms comprehensive information about all the costs of owning the securities subject to disclosure, including investment company costs such as ''management fees'' and ''other expenses'' that are disclosed in the prospectus. The disclosure of those costs would be made in both dollar terms and as a percentage of investment value. Because our investor testing showed that disclosure of costs appears to be most effective when all the components of the costs are identified, broker-dealers would be required to show the breakdown of annual costs by category. In addition, they would be required to disclose any flat annual fees, such as the account fee illustrated on Attachment 1.

f. *Disclosures tailored to share class and pricing structure.* Broker-dealers would be required to tailor point of sale disclosures to reflect particular share classes or other pricing structures that are applicable to a contemplated purchase. Accordingly, point of sale disclosure would be required for all share classes and pricing structures, not just the front-end, back-end, and ''level load'' structures set forth in the attachments (commonly referred to as A, B, and C share classes). Broker-dealers selling any other share classes or pricing structures would be required to provide the applicable disclosures from the attached forms.

g. *Disclosure of all share classes under consideration.* A broker-dealer would have to provide point of sale information with regard to all share classes that are under consideration at the point of sale, including share classes other than the typical A, B, and C share classes.

h. *Disclosure of revenue sharing arrangements.* Broker-dealers would be required to disclose the existence of revenue sharing payments they receive for promoting covered securities as a conflict of interest. Consistent with the proposed Internet disclosure requirements discussed below, broker-dealers would also be required to disclose on the point of sale forms an Internet Web site and a toll-free telephone number customers can use to find more detailed information about disclosures of those payments, including the amounts of, and sources of, the payments.[21]

i. *Disclosure of special incentives to broker-dealer sales personnel.* Broker-dealers would be required to disclose the fact, if true, that they pay their personnel proportionately more for selling the covered security than for others (*i.e.*, whether they pay differential compensation) or for selling certain share classes over others.[22] The

[17] There are potential disclosure efficiencies associated with standardized disclosure, such as the use of preprinted forms. At the same time, however, our testing has shown that many investors want information at the point of sale that is specific to the anticipated amount of their purchase. The proposed new forms are intended to strike a balance between the use of standardized disclosure and the ability for interested investors to receive more personalized information.

In developing these new proposed forms, we considered disclosing information based on a $10,000 hypothetical investment. However, our investor testing indicated that disclosure based on a $1,000 hypothetical investment should permit customers to more easily estimate the costs for their actual purchase amount than disclosures based on a $10,000 hypothetical investment. Furthermore, disclosure of information based on hypothetical $50,000 and $100,000 investments provide additional context and also illustrate the effect of breakpoint discounts on upfront sales loads (referred to on the forms and in this release as ''sales fees'' for mutual funds).

[18] Whenever an upfront sales fee is charged, the amount of the investment is less than what the customer pays.

[19] The ''investment amount'' could be defined to equal the customer's total payment less the upfront sales fee.

[20] The amount of any back end sales fee depends on the time an investor sells the covered security and the net asset value of the covered security at that time, the actual amount of the fee would not be known at the point of sale.

[21] Broker-dealers would not be required to include the amounts of revenue sharing payments on the point of sale disclosure forms, or on transaction confirmations. This differs from the proposed rules described in the Proposing Release. Some investors expressed more interest in information about the existence of the conflict of interest created by the revenue sharing payments than the amounts paid under revenue sharing arrangements. While descriptive information about the conflicts posed by revenue sharing arrangements is necessary to inform customers about the conflicts of interest facing their agents, as discussed below in part IV, Internet-based disclosure may be a preferable means for giving investors detailed and more thorough information about revenue sharing payments their broker-dealer receives and the conflicts of interest those payments create.

[22] As proposed, point of sale disclosure of differential compensation practices would not cover situations in which an associated person has a financial incentive to sell securities that pay a relatively high dealer concession or commission to the broker-dealer, even though that could translate into a relatively high payment to the associated person. That type of compensation incentive was not proposed to be captured at the point of sale due to the need to keep point of sale disclosure simple

forms would inform investors of where to find out more detailed disclosures of broker compensation and the special incentives paid to sales personnel for selling certain funds over others.[23]

j. *Reference to the fund prospectus as the primary source of information about the fund.* Broker-dealers would be required to include a statement that customers should consider all costs, goals and risks before purchasing a covered security, direct customers to the security's prospectus or official statement for more information, and inform customers that the broker-dealer can provide those documents, including the disclosure regarding special incentives.

k. *Permissive omission of categories where no information is applicable.* Broker-dealers would be able to omit any categories of information that are not applicable. For example, if the disclosure on the forms about a conflicts of interest is ''NO,'' broker-dealers could, but are not required to, omit that disclosure.

3. Request for Additional Comments

Would the proposed new point of sale disclosure forms outlined above and attached improve decisionmaking by providing investors with the right information about covered securities prior to purchasing those securities? Commenters are invited to discuss the effectiveness of the proposed point of sale disclosure forms in Attachments 1–6 and to suggest alternatives and modifications. Commenters specifically are invited to discuss:

Q. *Clarity of the forms.* Do the proposed new forms in Attachments 1–6 strike an appropriate balance between the use of plain English and the need for specific disclosure of information about the costs and conflicts associated with purchases of covered securities? Is the terminology used in the forms easily understandable? If not, how should it be modified? For example, should the disclosure of annual fees on the forms include the term ''12b–1 fee'' to refer to annual distribution and service fees paid to broker-dealers for selling a covered security? Should the disclosure of conflicts of interest on the forms include the term ''revenue sharing,'' so that investors may connect the information on the forms with information they receive through other disclosure documents or the media? Would the use of the terms ''12b–1 fee'' and ''revenue sharing'' be confusing? If so, what other terms are appropriate substitutes? Also, are there other terms that should be included on the forms?

- Is it appropriate for the Commission to mandate the format of the forms, including font size and layout? If the format of the forms is not mandated, is it likely, either intentionally or unintentionally, that broker-dealers would obscure the information being disclosed?
- Should the forms contain a ''date line'' where the broker-dealer would be required to fill in the date when the point of sale disclosures were communicated to the investor? Would such a requirement aid in assuring compliance with the rule? For point of sale information delivered orally, should broker-dealers be required to notify the customer that the information is current as of the date of disclosure?
- Should the forms contain a ''signature line'' which customers would be required to sign to evidence receipt of the point of sale disclosures? Would such a requirement aid in assuring compliance with the rule? Could it cause broker-dealers to make point of sale disclosures later in the selling process in order to avoid having customers sign multiple disclosure forms? How would such a ''signature line'' requirement be implemented for oral point of sale disclosures?

Q. *Identification of security subject to disclosure.* Do the attached proposed forms appropriately set forth the covered security's issuer and class or pricing structure, ticker symbol (if applicable), and other portfolio or fund designations as necessary to identify the security and differentiate it from the issuer's other securities?

- In a transaction involving a 529 savings plan interest or variable insurance product, point of sale disclosure would be required to encompass costs related to a number of underlying securities (such as 12b–1 fees imposed at the level of the underlying security), and conflicts related to underlying securities (such as revenue sharing paid for distribution of those securities). Should broker-dealers be required to inform investors that the information being disclosed reflects costs and conflicts arising from securities underlying the covered security that is being directly purchased, as well as the costs and conflicts directly applicable to the covered security? Should broker-dealers also be required to disclose the identity of the securities underlying the covered security that is being directly purchased? Are there certain circumstances where such disclosure should be required, such as when that information is not otherwise available?
- For interests in a 529 savings plan, should broker-dealers be required to identify a specific age-based portfolio or other portfolio within the plan, to the extent a specific portfolio has been identified at the point of sale? Alternatively, if the underlying portfolio has not been identified at the point of sale, should the broker-dealer be able to provide a disclosure document setting forth maximum costs (*i.e.*, maximum sales fee and maximum annual ownership costs) associated with all portfolios underlying the plan? To what extent do investors purchase interests in 529 plans without already having identified the underlying portfolio for the investment? If the state sponsoring a plan is not otherwise identified, should the broker also be required to disclose the name of the state in order to help customers determine whether they may be entitled to state tax deductions or other benefits for investing in that state's plan?
- Some states offer state tax benefits for investments in the 529 savings plans they sponsor. If residents of those states invest in a different state's 529 savings plan, they generally would not be eligible to receive the state tax benefits. Attachments 4–6 include a brief text reminding customers to consider the potential tax benefits of investing in a plan sponsored by their home state. Is this disclosure appropriate? Should it be modified, narrowed, or expanded?

Q. *Combined use of standardized and transaction-specific cost disclosure.* The proposed new forms would combine disclosure of standardized information with disclosure of transaction-specific information upon customer request, or in accordance with a broker-dealer's standard practice. Does this approach appropriately balance the cost savings of standardized disclosure with the effectiveness of transaction-specific

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and the risk that such disclosure either would invariably lead to a ''yes'' answer or else would be too unwieldy at the point of sale. *See* Proposing Release n. 105.

[23] As with disclosure of revenue sharing payments, investors in general expressed more interest in information about costs they would pay than in information about how broker-dealers were compensated. Accordingly, the forms would not require disclosure of the standard dealer concession that broker-dealers receive to sell the covered security. As discussed below in part IV, Internet-based disclosure may be a preferable means for giving customers quantified information about how their brokers are being compensated.

Because we prohibited the use of brokerage to promote distribution in September 2004, point of sale disclosure of information about portfolio brokerage commissions no longer would be necessary. *See* Investment Company Act Release No. 26591 (Sept. 2, 2004), 69 FR 54728 (Sept. 9, 2004). The NASD has adopted a corresponding amendment to its rules governing broker-dealers, and NASD rules for several years have prohibited member broker-dealers from favoring or disfavoring any fund based on expected brokerage commissions. *See* Securities Exchange Act Release No. 50883 (Dec. 20, 2004), 69 FR 77286 (Dec. 27, 2004).

disclosure? Should the Commission require that the brokers disclose transaction-specific information in all situations, and not just upon request? Alternatively, are there certain situations or products for which transaction-specific information should always be required?

Q. *Presentation of sales fee disclosure.* Would the disclosure of upfront sales fees in the forms in Attachments 1–6—with separate columns for payment amount, fee in dollars, investment and fee as a percentage of net investment—effectively communicate information about the amount of those fees and their immediate impact on investment? If not, how should the forms be modified? Would it be appropriate to exclude the impact of letters of intent, rights of accumulation, purchases by related parties, or other customer-specific discounts, in light of the additional costs and complexity that could be associated with their inclusion?

• For disclosure of upfront sales fees, should the ''investment amount'' equal the customer's payment less the amount of the sales fee? Should other fees, such as broker-imposed commissions or purchase fees, be deducted to determine the ''investment amount''?

• Would the proposed disclosure of deferred sales fees in the forms—with separate columns for investment amount, maximum fee in dollars and fee as a percentage of investment amount—effectively communicate information about the potential amount of those fees? Would focusing on maximum amounts of those fees, rather than providing year-by-year breakdowns, effectively convey information about those fees' potential impact?

Q. *Comprehensive annual cost disclosure.* Would the proposed method of disclosing comprehensive annual costs in the forms in Attachments 1–6—with separate columns for investment amount and fees in dollars and fee as a percentage of investment amount—effectively communicate illustrative information about the potential amount of, and likely variations in, those costs? Would the proposed new point of sale disclosure forms adequately put investors on notice that the disclosed amount of the annual costs are illustrative, and that actual amounts are likely to vary? Should the forms include a statement that such annual costs would not be directly taken out of the investor's accounts—and would not be subject to separate disclosure as they are incurred—but rather would continuously be paid out of the assets of the funds the investor has purchased (including underlying funds in two-tiered 529 savings plan interests and variable insurance products)?

• Should point of sale disclosure include all the costs to the investor associated with owning covered securities (including mutual fund management and other costs), and not only distribution costs? If not, what costs should be included? Commenters are also invited to discuss whether investors perceive the economic impact of costs differently based on whether costs are charged directly or indirectly (*i.e.*, fees that are deducted from fund assets).

• Should we require each category of annual fee to be separately quantified in percentage terms, as set forth in the proposed new forms? Should we require the aggregate of those annual ownership fees also to be quantified in dollar terms (based on the potential quantification standards discussed above)? Are there better ways to inform investors about the scope of those costs in dollar terms and to help investors understand the economic consequences of annual fees on an investment?

• Should point of sale disclosure set forth information about account fees that issuers may charge to typical investors in the covered security (other than fees that apply only in limited circumstances, such as returned check fees)? Should such account fees be expressed as a fixed dollar amount and/or as a percentage of assets (whichever is applicable)? If fees are applied only on accounts that are valued below a specified amount, should this threshold amount be disclosed? Commenters are also invited to discuss how disclosure of such fees could be expected to influence customers' decisions to purchase covered securities. Commenters also are invited to identify other fees that should be disclosed at point of sale, and discuss how disclosure could be done effectively.

• We also invite comment on the costs associated with providing dollar quantification of comprehensive fees, including the extent to which disclosure of transaction-specific information upon a customer's request would increase compliance costs.

• We note that the approach discussed here would require broker-dealers to make certain disclosures based on estimates, such as estimates of future first year ownership costs calculated with a total annual fee percentage that is derived from expense ratios reported in the current prospectus. The dollar estimates of those future first year costs also would be based on the assumption that the net asset value of an investment would not change during the first year following the investment. Broker-dealers would be required by rule to deliver those estimates, even though future outcomes may well differ from the estimates. Should the Commission address concerns about exposure to unfair private actions, for example, by requiring additional disclosures or providing a safe harbor? We would not expect private rights of action to result from non-fraudulent disclosures under the rule even if, for example, a broker-dealer erred by negligently transposing numbers between information in the prospectus and information reported at the point of sale.

Q. In addition to disclosing cost information category-by-category (*e.g.*, sales fees and annual ownership costs), should point of sale disclosure also depict ownership costs on an aggregate basis? Alternatively, should aggregate information be disclosed in lieu of category-by-category disclosure? Mutual fund prospectuses are required to estimate the total expenses associated with a $10,000 investment over one, three, five and ten year time horizons, based on an assumed five percent return and other assumptions. Those estimates help investors quantify the combined impact of disparate ownership costs such as sales fees and ongoing ownership costs. Those estimates also facilitate comparisons among share classes and funds. Would point of sale disclosure of information that similarly quantifies the aggregate impact of multiple cost categories provide a useful supplement to, or replacement for, category-by-category disclosure of ownership costs? If so, should disclosures of aggregate information reflect a range of investment amounts (such as $1,000, $50,000 and $100,000), consistent with other cost disclosures on the written point of sale form? On the other hand, would disclosure of aggregate cost information as a supplement to category-by-category information potentially confuse some investors by leading them to believe that those aggregate costs would be incurred in addition to other disclosed costs, rather than being an alternative way of expressing those costs? Would disclosure of aggregate information as a supplement to category-by-category information threaten to pose ''information overload'' that would reduce some investors'' use of point of sale disclosure? Would aggregate information be suitable as a replacement for disclosure of category-by-category information? Alternatively, would aggregate information be inadequate as a replacement for category-by-category information? For example, would

aggregate information fail to explicitly inform investors about the types and timing of ownership costs that they would incur if they purchase a covered security? Further, would aggregate information be inadequate because its accuracy depends on the accuracy of underlying assumptions? Commenters are invited to suggest models by which aggregate cost information could be disclosed clearly on written point of sale forms as a supplement to, or a replacement for, category-by-category information.[24]

Q. *Disclosures tailored to share class and pricing structure.* Should the Commission adopt separate forms for all share classes and pricing structures?[25] In the alternative, should the Commission adopt an additional form that would permit disclosure of all potential costs for all share classes and pricing structures of mutual fund and 529 savings plan investments, including purchase and redemption fees that are paid into fund assets?[26] How could disclosure of the costs of owning classes of covered securities that are not illustrated by one of the forms attached as Attachments 1–6 (or funds with different pricing structures than those illustrated) be efficiently implemented?

• Do the proposed new forms appropriately require disclosure of information about fees customers must pay upon purchase or redemption that are retained in fund assets (as distinct from sales loads and commissions that are paid to broker-dealers)? Should the required disclosure of redemption fees reflect the duration of such redemption fees? Should this type of disclosure be required to be quantitative or narrative, depending on the fee being disclosed? For example, should redemption fees imposed on short-term holdings (such as holdings of 180 days or less) be disclosed in narrative terms, with other redemption fees disclosed the same way that back-end sales loads would be disclosed (consistent with the quantification standards discussed above)? Should it include other information about other costs of owning covered securities not otherwise required to be disclosed in our proposed rules and forms, such as the one-time application fees that some states charge upon initial investments in their 529 savings plan interests? Is the placement of the disclosure of the application fee on the B and C class disclosures for 529 plans appropriate?

Q. *Disclosure of all share classes under consideration.* Would it be appropriate to require a broker-dealer to provide point of sale information with regard to all share classes that are under consideration at the point of sale?

Q. *Disclosure of revenue sharing payments.* Do the point of sale disclosure forms in Attachments 1–6 provide sufficient information about revenue sharing arrangements, including where to find more detail about those arrangements, to inform customer's investment decisions? In light of concerns expressed by commenters, including investors, that complex disclosures potentially could distract investors from other important information, is it appropriate to omit the sources and amounts of revenue sharing payments received by the broker-dealer from point of sale disclosures and require them instead to be disclosed on the Internet and made available to customers upon request through a toll-free number? On the other hand, investors may find this information useful at the point of sale. Should we require the disclosure of the source and amount of revenue sharing payments at the point of sale? Commenters are invited to discuss how revenue sharing information can be disclosed simply and efficiently.

• Should the requirement to disclose the existence of revenue sharing payments focus on payments, either to a broker-dealer or its affiliate, that are directly or indirectly funded by some or all of the following: an investment adviser; a principal underwriter; and an administrator or transfer agent of the issuer of the covered security (and of issuers of underlying securities with regard to two-tiered products)?[27] Should the disclosure requirement extend to payments from issuers and/or from other parties not specifically identified above?[28] Would such a requirement be adequate to prevent evasion of the proposed disclosure obligation? The revenue sharing disclosure obligation set forth in the Proposing Release focused on payments received from persons ''within the fund complex.'' Under this targeted approach to disclosure of revenue sharing payments, would it be appropriate to eliminate the definition of ''fund complex''?

• Should the proposed definition of ''revenue sharing'' be replaced by a definition of ''promotional payment'' to more accurately reflect the nature of such payments? If the required disclosure were to be targeted, as discussed above, to payments received from investment advisers, principal underwriters, administrators or transfer agents, should the definition of either ''revenue sharing'' generally encompass payments from an investment adviser, principal underwriter, administrator or transfer agent to a broker-dealer or associated person? Should payments that constitute dealer concessions be excluded from the definition because dealer concessions do not raise the same conflicts as special compensation arrangements, which warrant special disclosure?[29] Should payments funded by asset-based distribution fees (such as rule 12b–1 fees) be excluded because they would be included elsewhere in the point of sale disclosure? Should payments that represent compensation for providing services as a principal underwriter of a covered security be included or do those payments not pose the same conflicts of interest?[30]

Should payments to an issuing insurance company from funds underlying variable insurance products be included? What conflicts do these payments pose? Would other inclusions or exclusions be appropriate?

• If the revenue sharing disclosure were targeted, as discussed above, should the required disclosure exclude payments made ''solely in connection''

[24] Disclosure of aggregate cost information also may facilitate the disclosure and use of comparative information at the point of sale. That is because it may be easier for many investors to weigh a single aggregate cost amount against the benchmark posed by the aggregate cost average and range for alternative funds, than it would be to separately weigh the comparative context of upfront sales fees, deferred sales fees and annual ownership costs. As discussed above, we expect to address possible requirements for disclosure of comparative information in a later release.

[25] Other pricing structures would include purchase and redemption fees some funds charge and which are paid into fund assets rather than for distribution.

[26] For example, in the Proposing Release the Commission set forth a generic point of sale form that was not specific to any particular share class or pricing structure.

[27] Such an approach would be an alternative to the proposed requirement that the broker-dealer identify payments received from persons within a ''fund complex'', including affiliates of the fund but not the fund issuer.

[28] While a commenter has suggested that the revenue sharing disclosure requirement be limited to payments ''in connection with'' the sale or distribution of covered securities, such an approach may inject too great an element of subjectivity into the disclosure requirement, by permitting a broker-dealer to characterize a particular payment as not distribution-related, and claim no need to disclose it. It may be more effective to implement an approach that requires disclosure of the types of payments that can be expected to compensate broker-dealers for distribution, and that does not reach to other payments.

[29] As defined in the Proposing Release, the dealer concession consists of fees earned by the broker-dealer at the time of sale from the issuer or its agent, the distributor or another broker-dealer.

[30] The point of sale rules propose an exception for underwriters. Even if a targeted underwriter exclusion were adopted, however, such a carve-out might be inappropriate at times, such as when an underwriter is broker of record on an ''orphan'' account originated by another broker-dealer.

with securities issued by a person that is not a ''related issuer'' of the issuer of the covered security? If so, would a definition of ''related issuer'' appropriately encompass the issuer of the covered security (and underlying securities in the case of two-tiered products), and the issuers of other covered securities that hold themselves out as related companies for purposes of investment or investor services, as well as other affiliated issuers? [31] Would there be better ways of excluding payments that are intended to promote the sale of a covered security other than the security that the customer is considering purchasing?

• If the required revenue sharing disclosures were targeted in such a way, should the disclosure requirement further exclude payments received by an associated person if the broker-dealer making the disclosure reasonably determined that the associated person received those payments solely in connection with the distribution of covered securities by a different broker-dealer or by a bank? [32] Are there other ways of excluding payments to affiliates that would not pose conflicts of interest for the broker-dealer and would pose fewer compliance challenges? Would such an exclusion for payments received by affiliates that are linked solely to a second broker-dealer's distribution activities be justified in part by the expectation that the second broker-dealer would be required to provide point of sale disclosures to put its own customers on notice of those payments? Should such an exclusion apply if payments received by an affiliate are not solely linked to the distribution activities of a second broker-dealer or a bank?

• If payments received by an affiliate of a broker-dealer would not have to be disclosed if they are ''solely connected'' with the distribution activities of another broker-dealer or a bank, what facts and circumstances should a broker-dealer have to consider to determine whether revenue sharing received by an affiliate are in fact ''solely connected'' with the distribution activities of another broker-dealer or a bank? [33] In the case of payments that do not represent transaction-based or asset-based payment streams, such as payments that are designated as compensation for seminar sponsorship, should the broker-dealer be permitted to avoid having to disclose payments received by an affiliated broker-dealer if the payments that it receives and the payments that the affiliated broker-dealer receives are reasonably proportional to the relative size of the two broker-dealers' distribution activities? [34]

• Would such a comprehensive alternative to revenue sharing disclosure, including the possible elimination of the definition of ''fund complex,'' adequately exclude payments that a broker-dealer receives in connection with underwriting municipal bonds?

• Is the description in the attached forms of the conflict that arises as a result of revenue sharing arrangements readily understandable? If not, how should it be modified? Should the term ''revenue sharing'' be explicitly stated in the description of the conflict or would this term be confusing?

Q. *Disclosure of special incentives to broker-dealer sales personnel.* Broker-dealers would be required to disclose on the proposed new forms, if true, that sales personnel are paid more for selling the covered security over other securities. Is this disclosure appropriate? Is it useful to investors? Is the language used to describe this conflict of interest appropriate? Should point of sale disclosure of differential compensation practices cover situations in which securities pay a relatively high dealer concession or commission to the broker-dealer, rather than only the situation where a broker-dealer provides an extra financial incentive to its sales personnel for selling a covered security?

• In light of concerns expressed by commenters that overly complex disclosures could distract investors from other important information, is it appropriate and helpful to omit quantified information about dealer concessions from point of sale disclosures and require it instead to be disclosed on the Internet, as discussed below?

• In addition, the attached forms for class B and class C shares would require disclosure of the fact, if true, that sales personnel are paid more for selling those classes of securities than class A shares. Is this disclosure appropriate? Is it helpful to investors? Should it appear on the forms for other classes of shares?

• Do the references pointing investors to the broker-dealer's Web site for more information about ''special incentives'' adequately inform investors of where they can find more details about revenue sharing payments? Should other terms be used, such as ''extra incentives'' or ''conflicts of interest''?

Q. *References to the fund prospectus as the primary source of information about the fund.* Would the approach for disclosure of other information on the forms in Attachments 1–6 (apart from ownership costs and conflicts of interest), such as the fact that investors should take other factors into account when making investment decisions, strike a reasonable balance between disclosure that is easy to understand and disclosure that is appropriately comprehensive?

Q. *Permissive omission of categories where no information is applicable.* Would it be appropriate to permit broker-dealers to omit categories of information that are not applicable, or should disclosure of such categories be required to promote comparability? Should conflict of interest information be presented in all situations to provide investors with full conflict information about all funds they are considering? Should some sections be required to be omitted if inapplicable, such as sections on upfront fees for forms for variable

[31] Such a definition would be consistent with other securities laws provisions that identify investment company affiliates in part depending on whether two companies hold themselves out as related companies. *See, e.g.*, Exchange Act rule 15a–6 (defining term ''family of investment companies'' in part based on whether registered investment companies that share the same investment adviser or principal underwriter ''hold themselves out to investors as related companies for purposes of investment and investor services''); Investment Company Act rule 11a–3 (defining term ''group of investment companies'' in part based on whether registered open-end investment companies hold themselves out to investors as related companies for purposes of investment and investor services).

[32] Securities activities by banks are subject to a different regulatory regime, so long as the banks meet applicable exceptions and exemptions from the definitions of ''broker'' and ''dealer'' set forth in Sections 3(a)(4)(B) and 3(a)(5)(B) of the Exchange Act and the rules thereunder. *See also* Securities Exchange Act Release No. 50618 (Nov. 1, 2004) (order extending temporary exemption of banks, savings associations, and savings banks from the definition of ''broker'' under Section 3(a)(4) of the Exchange Act).

[33] For example, would it be reasonable to conclude that payments received by an associated person (including a second broker-dealer or a bank) are solely in connection with the distribution activities of a second broker-dealer or a bank—and hence to fall within such an exclusion—if the payments are comprised of transaction-based streams that are linked solely to transactions effected by that other broker-dealer or bank, or if the payments are comprised of asset-based streams that are linked solely to assets held by customers of that other broker-dealer or bank?

[34] For instance, if the disclosing broker-dealer and the affiliated broker-dealer each have sold roughly the same amount of covered securities on behalf of the fund complex in the past year, and the two broker-dealers each received roughly the same amount of such miscellaneous payments, then would it be reasonable for the disclosing broker-dealer to conclude that the miscellaneous payments received by the affiliated broker-dealer were solely in connection with the affiliated broker-dealer's distribution activities? If, in contrast, the affiliated broker-dealer received materially more of those miscellaneous revenue sharing payments then the disclosing broker-dealer, while relative sales still were roughly the same, then would the disclosing broker-dealer reasonably have to inform the customer about those payments?

annuities that do not charge them? Would disclosure of some inapplicable information (for example, the fact, if true, that a broker-dealer is not paid extra for promoting one fund over others) serve to educate investors, or enhance their understanding of the remaining disclosure?

• In addition, would it be appropriate to permit broker-dealers to omit all point of sale information, thereby eliminating all point of sale disclosures, in circumstances where there are no distribution-related expenses or conflicts of interest required to be disclosed at the point of sale? Would such an approach create a competitive advantage for funds that take advantage of such an exception? Would any such advantage be appropriate?

B. Oral Disclosure of Point of Sale Information

Commenters expressed a variety of views about the proposed requirement for point of sale information to be disclosed orally when the point of sale occurs through means of oral communication other than at an in-person meeting (such as through a telephone conversation). Some consumer advocates questioned whether oral disclosure ever would be appropriate in light of difficulties associated with monitoring compliance and the need to give investors the opportunity to consider the point of sale information when making investment decisions. Some securities industry commenters suggested replacing oral disclosure with Internet-based alternatives or after-the-fact disclosure. Others stated that a verbatim reading of the point of sale form would not be practical and that disclosure of summary information should be sufficient. Commenters also stated that customers should be able to opt out of disclosure in certain circumstances, such as when orders are placed through automated telephone systems.

As the comments indicate, oral point of sale disclosure poses special challenges given the difficulty that could be associated with hearing complex information without simultaneously seeing it. However, we are concerned that Web site disclosure or after-the-fact disclosure could be ineffective at providing investors with key information about costs and conflicts contemporaneous with investment decisions as point of sale disclosure. Moreover, we are concerned that requiring broker-dealers to provide all point of sale disclosures in writing prior to accepting an order might preclude investors from purchasing mutual funds and related securities over the telephone without undue delay.[35]

In light of these concerns, we believe that one possible way to make oral point of sale disclosure more effective could be to require broker-dealers to provide oral point of sale information that is either: (A) Quantified to reflect the anticipated amount of the purchase; or (b) quantified to reflect a standardized purchase amount—$1,000, $50,000 or $100,000—that would be appropriate based on the customer's anticipated payment and the fee schedule of the covered security (or $1,000 if that amount is not readily estimable), supplemented by transaction-specific quantification upon the investor's request.[36]

A second possibility could be to clarify that oral disclosure would not require a verbatim reading of the written disclosure form. Instead, in addition to the quantitative information discussed above, broker-dealers would be required to provide summary qualitative information about whether they receive revenue sharing payments or engage in differential compensation practices, as well as to disclose other information useful to investors (some of which are suggested in the questions below). This could include requiring disclosure that they are required to provide transaction-specific quantified information upon the customer's request (if such transaction-specific information has not been provided as a matter of course). Under such an approach, broker-dealers would be able to omit categories of costs that are not applicable to a contemplated purchase.

A third possibility could be to permit a broker-dealer using an automated telephone system to receive customer purchase orders to program the system to convey the required point of sale information about sales fees and then allow customers to elect not to listen to information, other than about sales fees, that otherwise would have to be disclosed in a written disclosure document. Such an exception could accommodate the preference of some investors not to hear point of sale information, while helping to ensure that investors at a minimum are provided with information about sales fees. This alternative would not appear appropriate when a customer communicates with a natural person associated with a broker-dealer as part of the process of placing an order because, in these circumstances, the natural person would be well positioned to provide disclosure and respond to investor questions.[37]

Request for comment. The Commission generally seeks comment on oral point of sale disclosure. To make oral point of sale disclosure more effective, should the Commission adopt one of the alternatives outlined above, or some combination of the alternatives? Would any of the alternatives be more effective than others? Would some combination of the alternatives be effective? Should the Commission require the broker-dealer to provide an investor a written copy of the disclosure form following each oral conversation? Should that disclosure be limited to an oral conversation that results in the customer placing an order? Are there other alternatives not discussed above that would make oral point of sale disclosure more effective? Commenters specifically are invited to address:

Q. Would the proposed revised quantification standards for oral disclosure better permit investors to obtain sufficient information about the costs of owning covered securities than our original proposal? Would this approach provide investors with a reasonable amount of specificity without ''information overload''? If not, what other approaches should the Commission consider? Are disclosures based on standardized $1,000, $50,000 or $100,000 amounts appropriate? Would different or additional standardized amounts be appropriate (*e.g.* $10,000)? Should we adopt additional requirements to inform customers that the costs they may incur may be different than those disclosed at the point of sale due to the effects of rounding?[38]

Q. When point of sale disclosure is made orally, would it be practical to require broker-dealers to disclose that they are required to provide transaction-specific quantified information upon the customer's request (if such transaction-specific information has not been

[35] As discussed more fully below, we are considering ways to combine written and oral point of sale disclosure. We would expect any written disclosure supplementing oral point of sale disclosure to be provided contemporaneously.

[36] Under the latter type of arrangement, the broker-dealer would not be able to ''round up'' the standardized disclosure amount to reduce the apparent percentage sales fee communicated through oral disclosure. For example, if the anticipated amount of the payment is $85,000, standardized information with regard to a $50,000 model payment may be more appropriate for disclosure of upfront sales fees than standardized information with regard to a $100,000 model payment, if the $50,000 model more accurately depicts the percentage sales fee associated with the customer's anticipated payment.

[37] Such an alternative would not permit a broker-dealer to require a customer to ''opt into'' point of sale disclosure, but simply would allow a customer to affirmatively ''opt out'' of such disclosure.

[38] *See* Proposing Release, n. 155 (discussing the impact of rounding).

provided as a matter of course)? Would it lead to practical and effective disclosure if we were to require broker-dealers to disclose that investors should consider all costs, goals and risks associated with potential investments before making purchases, and that related information is available in the applicable prospectus or official statement which the broker-dealer can provide to the customer? Would it lead to practical and effective disclosure if we were to require a broker-dealer to inform customers that they can inquire about special incentives that the broker-dealer may receive to sell the covered security? If not, how should we require that a broker-dealer provide an investor with adequate disclosure about these special incentives?

Q. If a customer is contemplating buying a security with an upfront sales fee, would it be appropriate and useful for the customer to receive disclosure that he or she may qualify for fee discounts if the customer or members of the customer's family holds other shares from the fund family, or if the investor agrees to make additional purchases? Should broker-dealers have to disclose additional types of qualitative information? If so, what sort of information? For any such category of information, should the rules permit the broker-dealer to omit any disclosure conditioned on the broker-dealer's providing the customer with additional information in writing at a later time? Should there be any other conditions a broker-dealer would have to meet before being able to do so?

Q. Would it be useful to investors to require broker-dealers to disclose that investors should consider all costs, goals and risks associated with potential investments before making purchases, and that related information is available in the applicable prospectus or official statement which the broker-dealer can provide to the customer? Would it be useful to investors to require a broker-dealer to inform customers that they can inquire about special incentives that the broker-dealer may receive to sell the covered security? If not, how should we require that a broker-dealer provide an investor with sufficient disclosure about these special incentives?

Q. Would it be useful to investors if the Commission were to clarify that when providing oral disclosure a broker-dealer must provide summary qualitative information about whether a broker-dealer receives revenue sharing payments or engages in differential compensation practices? What other information would be useful to investors to receive if broker-dealers were permitted to summarize qualitative information? Are there compliance procedures that would help ensure that permitting broker-dealers to summarize qualitative information would not lead to situations where brokers obscure the information being disclosed?

Q. Would it be appropriate to allow investors using automated telephone order systems to ''opt out'' of receiving certain oral point of sale disclosures? If so, what categories of information should be mandated and what categories subject to the opt-out right? If investors could opt out, would they still receive sufficiently helpful information to make an investment decision? Could an exception permitting customers to ''opt out'' of oral point of sale disclosure for orders taken via automated telephone systems be subject to manipulation intended to deter delivery of point of sale disclosure? What limitations could minimize or eliminate this potential? Should we require broker-dealers to send written point of sale disclosures to customers who opt out of oral point of sale disclosures for orders taken via automated telephone systems?

Q. Would it be helpful to investors who receive oral point of sale disclosure to receive both the quantitative information discussed above, as well as summary qualitative information about whether their broker-dealer receives revenue sharing payments or engages in differential compensation practices? Is there a minimum amount and/or type of information that should be mandated for oral point of sale disclosure? What should be the required key items to help investors make informed investment decisions?

Q. Would it be appropriate to permit broker-dealers to make Internet-based disclosures or e-mail disclosures to those customers who consent to electronic delivery? Should Internet-based or e-mail disclosures be made in the same format as that of the proposed point of sale disclosure forms? On what basis should the Commission permit a broker-dealer to do this? What limitations or procedures should apply to help ensure that customers actually receive written disclosures at the point of sale?

C. Timing of Point of Sale Disclosure

The proposed definition of ''point of sale'' would have determined the timing of disclosure through a two-tiered approach. In general, the proposed rule would have required disclosure ''immediately prior'' to acceptance of the order. In circumstances in which a broker-dealer could solicit transactions and receive compensation without opening customer accounts or handling customer orders, however, disclosure would have to have been received upon initial communication with a customer.

Consumer advocates stated that investors should receive disclosure earlier in the sales process to have adequate time to consider the information when making investment decisions. They suggested adding a time-of-recommendation component to trigger the disclosure. Some securities industry commenters suggested that point of sale disclosure could be provided most efficiently at the time of account opening. Some also indicated that the proposed communication-based standard would be difficult to implement and would lead to duplicative disclosure.

The timing of point of sale disclosure is critically important, as investors should receive information early enough in the sales process to give them adequate time to consider the information, but not so early that they receive multiple disclosures for securities they may not be interested in purchasing. The timing of the point of sale trigger also should reflect the various ways in which customers may convey orders.[39]

Request for comment. The Commission solicits comment on the timing of point of sale disclosure. Should the Commission adopt a revised ''point of sale'' definition that would allow investors to receive disclosure earlier in the sales process than they would have in the initial proposal? If so, how should the Commission define the ''point of sale'' to promote timely disclosure while minimizing implementation and compliance difficulties? Commenters are also requested to discuss the following issues relating to the ''point of sale'' definition:

Q. How could the general point of sale trigger be moved earlier in the sales process while remaining meaningful? For example, should it be based on the earlier of the time that a customer expresses a ''preliminary intent'' to purchase the covered security or the time that a broker-dealer recommends a covered security?[40] If so, should the

[39] For example, an order-based trigger would not appear practical when a broker-dealer can solicit transactions and receive compensation without executing customer orders (such as may be present in so-called ''check and application'' arrangements), because in these circumstances the purchase may be completed before the soliciting broker-dealer is even aware of the order.

[40] Some commenters have suggested that point of sale information should be disclosed only when a broker-dealer recommends a transaction, not when a customer places an unsolicited order. However, when a broker-dealer does not specifically recommend the securities it is selling, investors

standard for disclosure ''immediately prior'' to receipt of the order be retained as a backstop if disclosure otherwise is not provided earlier? What regulatory requirements or compliance procedures could help ensure that such an option would be treated as a backstop, rather than the primary option for timing the delivery of point of sale information? [41]

Q. How could the point of sale trigger avoid disclosure gaps when a broker-dealer solicits and is compensated for an order, but does not execute the order? In these circumstances, should the point of sale be the later of the time the broker-dealer ''first communicates'' with the customer about the covered security, or the time the customer expresses a ''potential interest'' in purchasing the covered security? Would other standards for the definition of ''point of sale'' better provide timely disclosure, while reflecting the fact that there may be an ongoing dialogue between the broker-dealer and the customer? If so, what would those standards be?

D. Exceptions to Point of Sale Disclosure Requirements

1. Exception for Subsequent Purchases of a Particular Covered Security and Class

Some commenters urged the Commission to implement a point of sale exception that encompasses an investor's non-periodic purchases of a covered security following his or her initial purchase.[42] In their view, the critical decision related to an investment in a covered security is made prior to the investor's first purchase of that security, and requiring point of sale disclosure for subsequent purchases would be duplicative and unlikely to promote informed investment decisionmaking.

Request for comment. We solicit comments on the appropriateness and necessity of point of sale disclosure for subsequent non-periodic purchases of a covered security. Would a subsequent purchase exception appropriately balance the goal of enhancing investment decisionmaking with reducing potentially duplicative disclosures? Commenters specifically are invited to discuss:

Q. How could a point of sale exception for subsequent purchases of a covered security be crafted to reduce disclosures that otherwise would be redundant? Should such an exception be absolute, or should it require occasional redundant disclosure to accommodate investors who might have been distracted at the time of the initial point of sale disclosure, or might have forgotten about it because substantial time has passed since receiving the disclosure?

Q. To address the possibility that prior point of sale information becomes outdated, should the exception be limited by how much time separates the original transaction and the subsequent transaction, such as six months, 12 months, or some other time period? Should such an exception require the broker-dealer periodically to provide the customer with some or all of the information that otherwise would be provided at the point of sale? Should broker-dealers be permitted to satisfy such a requirement by providing standardized point of sale forms periodically to the customer? Should a subsequent purchase exception be conditioned on the broker-dealer providing transaction-specific point of sale disclosures upon the customer's request? Should an investor be able to request point of sale disclosure and thus override an exception? What other conditions or limitations would be appropriate for such an exception?

Q. Should such an exception apply to purchases of money market funds? If so, how? Should broker-dealers be required to make disclosure about money market funds at the time the customer funds a brokerage account? [43]

Q. To what extent could an exception for subsequent purchases be subject to abuse by unscrupulous salespersons who seek to obscure the impact of distribution costs by following a relatively modest initial sale that bears small distribution costs with a much larger subsequent sale, without disclosure at the latter time? [44] Are there ways, such as limiting the subsequent sale exception to purchases in amounts equal or less than the initial purchase, that would help prevent such abuse? How would such a limitation affect broker-dealer system costs?

Q. How narrowly should an exception for subsequent purchases be drafted? Would it be enough to limit such an exception to purchases of a covered security having the issuer, program series (or portfolio in the case of 529 savings plans), and share class (or pricing structure in the case of variable insurance products) for which the customer previously received point of sale disclosure from the broker-dealer? In the case of 529 savings plans and variable insurance products, should such an exception be further limited to subsequent purchases of the same portfolio or directed to the same subaccounts?

Q. Would the use of Internet web sites help customers receive point of sale information when making subsequent purchases? For example, would making standardized point of sale information available on the Internet be a useful means by which broker-dealers would be required to provide point of sale information upon subsequent purchases, to customers who want additional information but are willing to accept Internet-based disclosure?

Q. Commenters are invited to estimate the total number of transactions that would be subject to any such exception, as well as the potential cost savings to broker-dealers.

2. Exception for Purchases by Institutional Investors

In proposing rule 15c2–3, we requested comment about whether to include an exception for purchases by institutional investors. Several commenters supported such an exception, and one recommended that we refer to NASD rules to define ''institutional investor.'' [45]

may wish to scrutinize whether the fees they are paying to the broker-dealer, and the rersulting reduciton in net investment and in return on their money, are justified by the relatively limited services they receive. Moreover, even absent an explicit recommendation, a broker-dealer can influence a customer's investment decision through the way it presents investment options. Allowing disclosure to vary depending on whether a recommendation has occurred also may give some broker-dealers the incentive to inappropriately assert that they are not making recommendations when in fact they are.

[41] We recognize that requiring earlier point of sale disclosure also may impact other proposed rule requirements. For example, one proposed provision of the point of sale rule states that orders would only be ''indications of interest'' prior to point of sale disclosure being provided. Some commenters criticized that provision as facilitating rescission based on ''buyer's remorse,'' and as potentially promoting market timing. Some commenters also raised operational questions related to that provision, such as how trades would be unwound (including whether the issuer would have to enter into an offsetting trade or whether the broker-dealer would simply bear a monetary loss). An earlier point of sale trigger, in combination with other investor remedies for broker-dealer violations of securities regulations, may influence our consideration of whether explicit ''indication of interest'' language would be appropriate.

[42] The proposed point of sale rule included an exception for periodic purchases.

[43] Money market funds, including funds that may be purchased through brokerage ''sweep'' accounts, may bear asset-based distribution fees and may be associated with revenue sharing payments.

[44] Does the inclusion of disclosure based on standardized purchase amounts help to address that potential problem?

[45] NASD rules 2211(a)(3) and 3110(c)(4), in conjunction, designate the following persons as ''institutional investors': (i) A bank, savings and loan association, insurance company, or registered investment company; (ii) an investment adviser registered with the Commission or with a state securities commission (or any agency or office performing like functions); (iii) any other entity

Continued

Request for comment. We request additional comment regarding the advisability, scope and limitations of such an exception. In particular, if the Commission were to adopt an exception for purchases by institutional investors, how could we define ''institutional investor'' to limit the exception to transactions with persons who may be expected to have sufficient financial sophistication to make point of sale disclosure unnecessary? Commenters are specifically invited to discuss:

Q. Should a definition of ''institutional investor'' include banks, savings associations, insurance companies, or registered investment companies?

Q. Should it include other entities, including corporations, partnerships and trusts, with total assets of at least $50 million? [46] Should a $50 million threshold also apply to government or political subdivisions, or other government agencies or instrumentalities? [47]

Q. Should natural persons with assets of at least $50 million be included within the definition of ''institutional investor''? [48] Commenters may also wish to discuss the extent to which including natural persons would not be necessary if a point of sale exemption for transactions subject to investment adviser discretion, discussed below, were adopted.

Q. Should a definition of ''institutional investor'' include persons acting solely on behalf of any other person who meets that definition? Should a definition of ''institutional investor'' be extended to other persons? Should it instead be based on the definition of ''qualified investor'' set forth in Section 3(a)(54) of the Exchange Act? [49] Alternatively, should the definition be based on the related definitions set forth in NASD rules? [50]

Q. Should any exception for purchases by institutional investors be conditioned on the broker-dealer providing point of sale disclosure upon an institutional investors' request? Would other conditions be appropriate for such an exception?

Q. Commenters are also invited to estimate the cost savings to broker-dealers if a point of sale exception for purchases by institutional investors is adopted. Commenters are invited to include an estimate of the total number of transactions that would be subject to any such exception, and to discuss whether broker-dealer compliance systems would be readily able to identify transactions with such persons.

3. Exception for Transactions Subject to Investment Adviser Discretion

Proposed rule 15c2–3 included an exception to point of sale disclosure for transactions in which the broker-dealer exercises investment discretion. Commenters generally supported this exception. Some commenters recommended extending the exception to transactions in which an investment adviser exercises investment discretion for the customer. Absent such an exception, the rule would require broker-dealers to provide or to send information to the investment adviser acting on behalf of the customer.

Request for comment. If the Commission were to adopt an exception to point of sale disclosure for transactions in which an investment adviser exercises investment discretion, should it be limited to investment advisers that are registered either with the Commission under Section 203 of the Investment Advisers Act of 1940, or with a state securities commission or agency or office performing like functions? Should the broker-dealer be required to provide point of sale information upon the request of the investment adviser? If so, should we require that the information be delivered in the same time frame as other required point of sale disclosures?

4. Potential Changes to Exception for Mailed Orders

Proposed rule 15c2–3 included a limited exception for transactions received from a customer via U.S. mail, messenger delivery or similar third-party delivery services.[51] The purpose of an exception for mailed-in orders is to promote effective disclosure while avoiding the need to delay the execution of orders received via mail or similar services. It was intended to recognize that it may not be possible to quickly locate those customers and provide the required disclosure. One commenter criticized the proposed exception as overly broad, indicating that it could allow broker-dealers to evade disclosure by recommending a fund and then having customers mail in orders. That commenter suggested narrowing the exception to apply only when there has been ''no prior contact'' about the transaction at which disclosure could have occurred.

Request for comment. The Commission solicits comments on the appropriateness and necessity of the mailed order exception. Could the potential for abuse be minimized if the Commission were to make the exception unavailable to a broker-dealer that prompts a customer to use the mail, messenger delivery or similar third-party delivery service to submit an order? Commenters are specifically invited to address:

Q. Would a ''no prior contact'' standard for mailed-in orders, discussed above, be practical?

Q. Should the exception require a broker-dealer relying on it to provide to its customers, every six months, standardized information about distribution costs and compensation associated with covered securities sold by the broker-dealer?

Q. What are other possible ways to appropriately tailor the exception for orders received via the mail, messenger

(whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million; (iv) a governmental entity or subdivision thereof; (v) an employee benefit plan that meets the requirements of Section 403(b) or Section 457 of the Internal Revenue Code and has at least 100 participants (but not including any participant of such a plan); (vi) a qualified plan, as defined in Section 3(a)(12)(C) of the Act, that has at least 100 participants (but not including any participant of such a plan); (vii) an NASD member or registered associated person of such a member; and (viii) a person acting solely on behalf of any such institutional investor.

[46] The $50 million threshold is consistent with NASD rules.

[47] That $50 million threshold would be consistent with the ''qualified investor'' definition set forth in Section 3(a)(54) of the Exchange Act.

[48] Such natural persons may be institutional investors under NASD rules.

[49] The definition of ''qualified investor'' in general encompasses: (i) Investment companies registered with the Commission; (ii) issuers eligible for an exclusion from the definition of investment company pursuant to section 3(c)(7) of the Investment Company Act; (iii) banks, savings associations, brokers, dealers, insurance companies, or business development companies; (iv) certain small business investment companies licensed by the U.S. Small Business Administration; (v) certain benefit plans; (vi) certain trusts; (vii) market intermediaries exempt under section 3(c)(2) of the Investment Company Act; (viii) associated persons of a broker-dealer other than a natural person; (ix) foreign banks; (x) foreign governments; (xi) corporations, companies, or partnerships that own and invest not less than $25 million on a discretionary basis; (xii) any natural person who owns and invests not less than $25 million on a discretionary basis; (xiii) any government or political subdivision, agency, or instrumentality of a government who owns and invests not less than $50 million on a discretionary basis; and (xiv) multinational or supranational entities or related agencies or instrumentalities. *See* Section 3(a)(54) of the Exchange Act.

[50] *See supra* n. 44.

[51] As set forth in the Proposing Release, this exception would have been available only to broker-dealers that receive no compensation for effecting transactions for customers that have no accounts with them. Moreover, the exception would have been conditioned on the broker-dealer providing, within the prior six months, information about the maximum potential size of sales loads, and asset-based sales charges and service fees, associated with covered securities sold by that broker, dealer or municipal securities dealer, as well as statements about whether the broker, dealer or municipal securities dealer receives revenue sharing or portfolio brokerage commissions or pays differential compensation.

delivery or similar third-party delivery service?

E. Special Issues Relating to Point of Sale Disclosure for Variable Insurance Products

When we proposed rule 15c2–3, we drafted a single set of disclosure requirements to apply to variable insurance products as well as other covered securities. Commenters, however, stated that the proposed point of sale forms were not well suited to illustrating the costs associated with variable insurance products and did not reflect the products' particular terminology, features, and pricing structure.[52]

To be effective, required point of sale disclosures for purchases of variable insurance products should take into account the unique characteristics of those products. This could be done through disclosure forms that are tailored to address the costs and conflicts particularly associated with variable annuities and variable life insurance products. Attachment 7 sets forth a point of sale disclosure form for variable annuities.[53] While this form is based on the point of sale forms for mutual funds and 529 savings plan interests discussed above, it is tailored to reflect the unique features of variable annuities. For example, it would require disclosure of insurance-related costs associated with variable annuities, and would alert investors to the existence of the ''free look'' right available to them under state law.

Request for comment. The Commission solicits comment generally on the appropriateness and necessity of written point of sale disclosure for variable annuity and variable life insurance products. If the Commission were to adopt written point of sale disclosure requirements for variable annuities and variable life insurance products based on the attached form, would the form enhance investor understanding of those products? Does the attached form provide appropriate disclosure of the costs and conflicts associated with variable annuities?[54] Does it provide appropriate disclosure for variable life insurance products? Commenters are also invited to suggest alternative models and submit alternative forms for both variable annuities and variable life insurance products. In addition, commenters specifically are invited to discuss the following:

Q. How could disclosure of comprehensive information about the costs of owning variable insurance products, such as mortality and expense risk fees, insurance costs, and fees associated with underlying funds, be accomplished?[55] Should each fee category be listed separately, or would disclosure of aggregate fees associated with a particular type of expense, such as insurance or fund costs, be preferable? Would disclosure of aggregate underlying fund fees, rather than discrete disclosure of each element of the fees' composition, be sufficient?

Q. Should broker-dealers be required in point of sale disclosure to inform investors about how variable insurance product fees and expenses are charged? Should it explain that insurance and underlying fund costs may be deducted daily from contract value, while other charges may be imposed quarterly or annually?

Q. Does the proposed disclosure of annual percentage ranges accommodate the different ways in which variable insurance product fees are calculated? If not, how might this be accomplished?[56]

Q. Would point of sale disclosure of the maximum surrender charge percentage, and the general basis for its calculation, be sufficient to alert investors to these costs, particularly in light of the potential complexity of the surrender charge calculation?[57] Should broker-dealers be required in the point of sale disclosure to disclose the potential recapture of bonus credits? Commenters are invited to provide specific suggestions for making this disclosure.

Q. Should we require the inclusion in point of sale disclosure of costs associated with assets directed to the insurance company's fixed account?[58] If so, would quantitative disclosure be necessary or would narrative disclosure suffice?

Q. Commenters also are invited to specifically address what terminology should be used in the point of sale disclosure for variable annuities. Should terms used in the point of sale disclosure be consistent with language commonly used in variable insurance product disclosure documents, including prospectuses, and sales materials? If not, commenters are invited to suggest ''plain English'' substitutes.

Q. Should broker-dealers be required in point of sale disclosure to enumerate any non-recurring costs of owning variable insurance products, such as fees associated with excessive underlying fund transfers, or loan processing fees?

Q. Because variable annuities typically do not impose both upfront and deferred sales fees, should the rule require broker-dealers to exclude the inapplicable section?

Q. Should we require that the point of sale disclosure for variable insurance products describe the features and risks particular to these products, such as their insurance aspects, tax treatment and penalties for early withdrawal?

Q. Although variable annuities and variable life insurance share many characteristics, the products differ in a number of ways.[59] Comment is requested on how to tailor point of sale disclosure for variable life insurance. How should the insurance costs associated with variable life insurance be disclosed? Many broker-dealers use personalized illustrations to provide information to prospective variable life insurance purchasers. Personalized illustrations are tables that demonstrate how the cash value, cash surrender value, and death benefit under a policy change over time based on (i) assumed gross rates of return on the underlying mutual funds, and (ii) deduction of applicable fees and expenses. These

[52] For example, the concept of ''share class'' generally is not applicable to variable annuities. In addition, variable annuities impose charges for available insurance features, which were not addressed in the original proposal.

[53] Like the other point of sale forms discussed above, the proposed new form in Attachment 7 depicts how the required form would be filled in for a hypothetical variable annuity. The form is designed to disclose standardized information, plus transaction-specific information upon the customer's request or as part of the broker-dealer's standard practice. Similarly, the form would include quantified information about upfront sales fees and investment amount, deferred sales fees, and ongoing fees and expenses, as well as narrative information regarding potential conflicts of interest.

[54] Broker-dealers would be required to disclose upfront sales fees on the proposed new form for variable annuities. Although front-end sales fees typically have not been charged on variable insurance products in recent years, we understand that a number of issuers are considering that pricing option. *See* Annuity Market News (October 2004).

[55] Mortality and expense risk fees are imposed, in part, to compensate the insurance company for insurance risks it assumes under the contract.

[56] For example, mortality and expense risk charges for some variable life insurance products are calculated based on underwriting characteristics of the contract owner or the insured.

[57] A surrender charge may be imposed if an investor withdraws money from the annuity before a specified time period, often from seven to nine years.

[58] The term ''fixed account'' refers to an account supported by an insurance company's general account. Variable insurance product investors who direct funds to the fixed account are credited a predetermined interest rate, which is typically reset from time to time.

[59] For example, while both products offer insurance features, variable life insurance typically has a more significant life insurance component, while a variable annuity typically may be utilized as a retirement investment vehicle. In addition, a variable life insurance purchase is typically subject to an insurance underwriting process, while a variable annuity purchase is not.

illustrations are based on the investor's particular circumstances, such as age, gender, risk classification, and premium payment pattern, and they reflect the effect of costs on death benefits and cash values. As an alternative to requiring point of sale cost disclosure for variable life insurance, should we instead mandate uniformity among personalized illustrations or otherwise regulate their content?

Q. Finally, commenters are invited to address any issues raised above regarding mutual funds and 529 savings plan interests that they believe are relevant to variable insurance product disclosure.

III. Confirmation Proposal

Commenters raised a number of issues about the proposed rule 15c2–2 confirmation requirements. Some were similar to issues discussed above with regard to point of sale disclosure, while others were specific to confirmation disclosure. In light of those issues and further analysis of the proposal, we seek additional comment on the confirmation disclosure in a number of particular areas.

A. Format of Confirmation Disclosure

Proposed rule 15c2–2 would require broker-dealers to deliver confirmation disclosures to customers ''in a manner consistent with Schedule 15C,'' subject to an exception for a periodic reporting alternative. The proposed Schedule 15C confirmation disclosure form includes general transaction information (*e.g.*, price and net asset value) plus purchase-specific information about distribution costs, broker-dealer compensation, differential compensation and breakpoint discounts, as well as extensive definitions and explanations.

Several commenters stated that the proposed disclosure form was inadequate in that it would omit important information, would not permit adequate operational flexibility, and would not permit disclosure of additional information that may be needed to prevent the confirmation from being misleading. Commenters also highlighted the industry-wide cost of upgrading confirmation generation and delivery systems to produce two-page confirmations consistent with Schedule 15C. Conversely, one commenter suggested that the proposal would not adequately ensure standardized and transparent disclosure. Our own investor outreach and AARP's testing indicated that Schedule 15C was less effective than intended.

Request for comment. If the Commission were to adopt revisions to the confirmation requirements in connection with transactions in covered securities, should it allow broker-dealers to use their own format for presentation of information in the confirmation (in contrast to our proposal to mandate the format of point of sale disclosures) in order to avoid costs for upgrading existing confirmation generation and delivery systems? Would this approach still appropriately convey the necessary information to investors? Alternatively, should the Commission prescribe a format for confirmation disclosures, such as the format used to produce the proposed new confirmations set forth in Attachments 8–13? Attachments 8–10 show possible confirmations for mutual fund purchases and Attachments 11–13 show possible confirmations for 529 savings plans. Commenters particularly are invited to discuss the following:

Q. Would it be appropriate to permit broker-dealers to deliver confirmations in varying formats so long as required information is disclosed? If no specific format is required, should the Commission require broker-dealers to follow specific disclosure criteria? [60]

Q. If a specific confirmation disclosure form is not prescribed, should broker-dealers be precluded from using different terminology (*e.g.*, terms such as ''sales load'' or ''12b–1 fee'') on confirmations than on point of sale disclosure forms?

Q. Will investors be more likely to be confused or unable to elicit relevant information if the format is not specified by the Commission? Commenters are also invited to estimate the cost savings that might be realized if broker-dealers were not required to deliver confirmations in a particular format.

B. Confirmation Disclosure of Comprehensive Ownership Cost Information

Proposed rule 15c2–2 would require confirmation disclosure of the potential amount of any asset-based sales charges and service fees that would be incurred by the issuer of the covered security in connection with the shares or units purchased. That was consistent with the rule's proposed focus on distribution costs rather than total ownership costs. As with point of sale disclosure, many investors favored confirmation disclosure of comprehensive information about ownership costs, beyond distribution costs, including disclosure of non-distribution costs such as fund management fees and other expenses.[61]

Request for comment. Should the Commission require confirmations to include information about all ongoing costs of owning covered securities, such as ''management fees'' and ''other expenses'', and not merely distribution costs? Commenters also may wish to address the forms in Attachments 8–13, which illustrate how such fees could be set forth on confirmations. Commenters particularly are invited to discuss:

Q. Would comprehensive confirmation disclosure of all the asset-based distribution charges, management fees and other expenses that constitute the annual asset-based costs of owning covered securities be particularly appropriate in light of the possibility that point of sale disclosures could be given orally, or that no point of sale disclosure could be given at all if a subsequent purchase exception is adopted? Would disclosure in a specified format and/or using specific terminology be particularly appropriate for the same reasons?

Q. Should information about comprehensive asset-based fees and costs be disclosed separately by category and in the aggregate, or only in the aggregate? Should the fees be expressed as a percentage of asset value and in dollars?

Q. In the case of two-tiered products, such as 529 savings plan interests and variable insurance products, should the disclosure requirement encompass fees associated with underlying securities as well as fees incurred by the issuers of covered securities? If disclosing the ownership fees associated with each fund underlying an insurance separate account or other covered security would not be useful, should confirmations instead set forth information about the fees associated with the underlying funds that are involved in a particular transaction, or about the range of possible fees? In such circumstances, should percentage disclosure be based on either the net asset value of the underlying securities purchased using money invested in the covered security or on the asset value of the covered security, itself?

Q. What operational issues would be related to the inclusion of comprehensive disclosure of the asset-based charges on transaction confirmations? Commenters are invited to estimate the cost of including this information.

[60] For example, such criteria could require broker-dealers to provide confirmations in a format readily communicated to investors, using layout and presentation that is reasonably calculated to draw attention to the information required under the confirmation disclosure rule, and using terminology that is intended to clearly convey required information to the investor.

[61] *See* Siegel & Gale/Gelb Consulting Report.

C. Confirmation Disclosure of Broker-Dealer Compensation

As described in the Proposing Release, proposed rule 15c2–2 would have required confirmation disclosure of the amount of dealer concessions earned by the broker-dealer in connection with the transaction, as well as estimates about the amounts of revenue sharing and portfolio brokerage commissions that a broker-dealer or its affiliates receives from persons within the fund complex. It also would require ''yes'' or ''no'' disclosure about whether the broker-dealer engaged in certain differential compensation practices.

While many investors supported the concept of confirmation disclosure about broker-dealer compensation, the results of our in-depth investor interviews and focus group testing suggested that investors are more interested in seeing the total amounts they pay for investments in covered securities than in seeing the broker-dealer's precise compensation. Some securities industry commenters discussed the difficulty of placing quantitative information about compensation on confirmations, and emphasized the cost required to convey compensation information from selling brokers to firms that issue confirmations or to other entities that prepare confirmations on behalf of selling broker (as well as the fact that investors ultimately may be expected to bear the bulk of those costs). A number of commenters stated that confirmation disclosure of broker-dealer compensation and conflicts of interest would be duplicative of the point of sale disclosure, and that disclosure of compensation and conflicts could be done more effectively through broker-dealer Internet web sites. Some securities industry commenters also stated that the proposed method of quantifying revenue sharing payments would be misleading, and that the disclosure of differential compensation was unclear and not well tailored to those payments.

As discussed in more detail below, we are asking for comments about the possible use of Internet-based disclosure as a supplement to, but not a replacement for, point of sale and confirmation disclosure. Under such an alternative, broker-dealers would be permitted to show the quantified details of their compensation practices to interested investors via a web site, while continuing to disclose the existence of the conflict of interest arising from such practices on point of sale and confirmation disclosure documents.

Request for comment. The Commission solicits comment on all aspects of the proposed disclosure of broker-dealer compensation. Should the Commission require broker-dealers to show quantified details of their compensation practices via a web site, and disclose only the existence of the conflict of interest arising from such practices on point of sale and confirmation disclosure documents? Commenters specifically are invited to discuss the following:

Q. Would supplementary Internet-based disclosure of the type discussed below serve as an appropriate and useful alternative to the confirmation disclosure proposed in the Proposing Release about how much and how broker-dealers and their personnel are compensated, particularly in light of concerns about ''information overload''?

Q. If confirmation disclosure about compensation is appropriate to assist investors, should information about revenue sharing payments be quantified on confirmations? If so, how could that accurately be done? Should we require, in addition to amount, the sources of revenue sharing payments received by the broker-dealer on the confirmation (*e.g.*, ''Last year, fund manager AAA or its affiliates paid us $XX to promote the sale of their funds'').

Q. What are the potential cost savings associated with requiring disclosure of the existence of the conflict of interest arising from broker compensation practices on the confirmation and point of sale documents and more detailed, quantified information about those practices on the Internet?

Q. If a transaction confirmation is issued by a clearing broker-dealer, but the sale also was effected by an introducing broker-dealer, should confirmation disclosure identify conflicts of interest separately for each broker-dealer?

D. Confirmations for Transactions Involving 529 Savings Plan Interests

As described in the Proposing Release, proposed rule 15c2–2 would require confirmation disclosure of the net asset value of the covered security, and, if different, the public offering price. One commenter noted that in the context of 529 savings plan interests there may not be an issuer-calculated net asset value available, and suggested that broker-dealers, issuers and other industry participants will need to work toward making net asset value, or information necessary to calculate net asset value, available on a daily basis.

Because 529 savings plan interests are two-tiered products, and their underlying portfolios may be purchased at a different time than the investment in some plans, the proposed rule may require multiple confirmations.

Request for comment. Commenters are invited to discuss generally confirmation disclosure in connection with transactions in 529 savings plan interests, as well as the following issues:

Q. In the event that a 529 savings plan issuer does not make information about net asset value and price available daily, how should a broker-dealer effecting a transaction in an interest in that plan report the net asset value and public offering price on the confirmation? Should the initial confirmation report that amount as ''unknown''? Should the broker-dealer be required to subsequently send the customer complete information as soon as it becomes available, through a supplementary confirmation? Are there other mechanisms that the Commission should permit broker-dealers to use to provide the required disclosure?

Q. To what extent do existing 529 savings plans hold investor money for one or more days before placing that investment into an underlying security? In such circumstances, should broker-dealers be required to provide separate confirmations (the first at the time of the customer's investment, and the second when the state issuer places that money into the underlying security)? In these circumstances, would the broker-dealer be sufficiently apprised of the state's practices to enable it to comply? For each such confirmation, what price or net asset value should be conveyed? Commenters are invited to suggest alternatives to this approach that would be consistent with investor protection.

E. Confirmations for Transactions Involving Variable Insurance Products

Attachment 14 sets forth a confirmation related to a transaction in a variable annuity. This confirmation form seeks to reflect the special characteristics and terminology associated with those products. For example, the form uses the term ''unit value'' rather than ''net asset value,'' and sets forth the unit value and number of units for each subaccount involved in a transaction. When appropriate, as shown on Attachment 14, the confirmation would set forth dollar amounts for each subaccount when accumulation units are not used.

Request for comment. The Commission solicits comment on all aspects of variable insurance product confirmation disclosure. If the Commission were to adopt confirmation disclosure requirements for variable insurance products similar to those on this form, would investors be

adequately informed about transactions in those products? Is the confirmation in Attachment 14 appropriate for transactions in variable life insurance products? Commenters specifically are invited to discuss:

Q. Would the confirmation form appropriately inform customers about the particulars of the investment, including information about the value and price of the investment (including amounts allocated to particular subaccounts and the insurance company fixed account) and the costs associated with owning underlying securities?

Q. What would be the implementation and cost issues associated with applying such confirmation requirements to variable insurance products?

Q. How should we tailor the confirmation disclosure requirement to variable life insurance products? How should the insurance costs associated with variable life insurance be disclosed? Should the forms include any explanation or definitions of the insurance terms that are used, such as ''mortality and expense risk fees,'' ''cost of insurance,'' ''death benefit,'' and ''fixed account''? Are there other insurance terms which should be used on the disclosures? Are there terms for which explanatory definitions would be useful to investors? [62] If so, what definitions should be used? Alternatively, would including definitions of insurance terms on the forms lead to ''information overload'' or otherwise not be useful to investors?

IV. Supplemental Internet-based Disclosure of Detailed Information About Revenue Sharing Payments and Other Broker Compensation Practices

Some commenters recommended permitting the proposed point-of-sale disclosures to be made on a broker-dealers' web site. We do not believe that Internet-based disclosure would be an adequate substitute for point of sale disclosure and improved confirmation disclosure.[63] We also do not believe that requiring investors to use the Internet as the sole means to obtain key information about their own costs of owning covered securities and about special compensation arrangements that lead to conflicts of interest will adequately serve investors' interests, or adequately address broker-dealers' obligations.

At the same time, a number of factors suggest that Internet-based disclosure could supplement point of sale and confirmation disclosures, and could adequately serve as a primary means of providing some types of information to customers. As noted above, investors generally expressed more interest in information about the costs of owning covered securities than about broker-dealer compensation.[64] Moreover, point of sale and confirmation disclosure of quantified compensation information also may lead to ''information overload.'' This may distract investor attention from information about distribution costs. Also, it would be difficult to accurately depict some compensation arrangements on simple disclosure documents given that any such approach may inaccurately cause investors to think their particular purchase would lead their broker-dealer to receive precisely the disclosed amount of revenue sharing, when in reality there would be no such causal link.[65]

Internet-based disclosure that provides customers with quantified information about broker-dealer compensation arrangements (not merely generic descriptive information) and identifies the sources of payments made under those arrangements could help customers evaluate how those arrangements can impact broker-dealers' recommendations and presentation of investment options. Necessarily, Internet-based disclosure must be supplemented with other means for investors to obtain the disclosure if they have no access to the Internet or desire to receive the disclosure by other means. Accordingly, we are considering requiring broker-dealers to maintain a toll-free telephone number which investors could call to request that a copy of the Internet-based disclosure be mailed to them.

Some broker-dealers currently disclose on their web sites quantified information about potential amounts of revenue sharing or other payments from fund families, including information about payments the broker-dealers receives from mutual funds for recordkeeping activities. While those web sites that have quantitative information represent steps in the right direction, customers should be able to see more information about how their sales personnel are compensated.[66] Moreover, customers should have ready access to quantified information rather than having to search for the information in the midst of extensive explanations. Customers also should be able to see compensation information that is labeled clearly and consistently, and not referred to by vague or generic terms such as ''administrative service'' or ''support fees'' or ''expense reimbursement.''

If the Commission were to require Internet-based disclosure of compensation arrangements—as a supplement to proposed disclosure of the existence of the conflict of interest arising from such practices on point of sale and confirmation disclosure documents—such Internet-based disclosure could include information about:

- Revenue sharing payments;
- Certain other payments out of issuer assets that may provide incentives for broker-dealers to distribute covered securities;
- Special compensation-related conditions that broker-dealers place on fund distribution;
- Broker compensation; and
- Brokers' differential compensation practices.

Attachment 15 illustrates how such Internet-based disclosure could appear in practice, if we were to adopt a rule requiring Internet-based disclosure of broker-dealer compensation arrangements.[67]

[62] For example, the Commission explains terms in its publication ''Variable Annuities: What You Should Know'' (available at *http://www.sec.gov/investor/pubs/varannty.htm*). Would these terms be appropriate to use in the context of variable life products?

[63] However, in part II.B above we requested comment about whether it would be appropriate to permit broker-dealers to deliver point of sale disclosures over the Internet or by e-mail to those customers who have opted to receive such disclosures electronically.

[64] *See* Siegel & Gale/Gelb Consulting Report.

[65] As set forth in the Proposing Release, rule 15c2–2 would have required broker-dealers to quantify revenue sharing and portfolio brokerage commissions on confirmations using a *pro rata* estimate approach that considered: (i) the amount of the customer's transaction, (ii) the broker-dealer's prior receipt of compensation from the fund complex, and (iii) the broker-dealer's prior distribution of shares on behalf of the fund complex. Some securities industry commenters objected to the proposed quantification of revenue sharing associated with particular transactions.

Securities industry commenters also emphasized that providing transaction-specific quantified information about compensation could be particularly costly on confirmations, as that could require selling broker-dealers to develop linkages to convey relevant data to clearing firms or others that issue confirmations.

[66] For example, an investor should be able to see not only what is the maximum possible fee a broker-dealer may receive, but also what a broker-dealer actually has received or can expect to receive for selling a particular covered security. That is because a customer would be better able to scrutinize a broker-dealer's sales efforts if, for example, the customer can see that one potential investment is associated with a 0.25 percent transaction-based fee, but another is associated with a 0.15 percent transaction-based fee.

[67] As noted in the Proposing Release, in 2003 NASD requested comment on proposed rules to require member firms to disclose certain information about revenue sharing and differential compensation to customers at account opening or, if no account is established, at the time the customer first purchases shares of an investment

Finally, for those customers who have no access to the Internet or who prefer other means of receiving the proposed Internet-based disclosures, we would also require broker-dealers to maintain toll-free telephone numbers by which investors can request a mailed copy of the disclosure information. As discussed in previous sections, the toll-free number would be disclosed on point of sale disclosures and on transaction confirmations.

A. Detailed Disclosure of Revenue Sharing Payments

A critically important component of any Internet-based disclosure of broker-dealer compensation arrangements would be detailed disclosures of revenue sharing payments that selling broker-dealers or their affiliates may receive for distributing fund shares from a fund's investment adviser or others.[68] As with qualitative point of sale disclosure, we are proposing to require quantitative Internet-based disclosure of revenue sharing payments, regardless of how they are labeled. Even if a particular payment from a fund complex fairly can be depicted as offsetting broker-dealer expenses connected with fund distribution, the payments still can constitute direct financial incentives for a broker-dealer to favor that fund complex over fund complexes that do not make such payments. The proposed disclosure requirement would be targeted toward payments that are most likely to impact the broker-dealer's distribution of the covered security, by excluding payments from certain sources and certain payments to affiliates.[69] On the Internet, the compensation that is required to be disclosed could be broken down by payment stream (with separate disclosure of transaction-based payments), asset-based payments, and miscellaneous payments.[70] The source of payments would also be disclosed.

Attachment 15 illustrates how those separate types of payment streams could be disclosed under such a requirement. For example, disclosure of transaction-based revenue sharing payments that the broker-dealer or associated person receives from certain affiliates of a fund would be required to be expressed in dollars received per $1,000 of covered securities sold, reflecting benchmarks that may lead to stepped-up compensation when the broker-dealer sells more shares of a particular mutual fund or fund family. Similarly, disclosure of asset-based revenue sharing payments would be required to be expressed in dollars received per $1,000 dollars sold, again reflecting benchmarks that may impact the compensation. Such disclosures would encompass revenue sharing payments received, whether by a broker-dealer or by an affiliate, in connection with securities that underlie a covered security, including revenue sharing payments received from underlying funds in connection with sales of 529 savings plans and variable insurance products.

This type of approach to disclosure also would require broker-dealers to summarize other revenue sharing payments that do not reflect transaction-based, and asset-based, income streams. Such amounts would be depicted retrospectively in terms of total dollars received in the prior fiscal year, along with a statement of the value of the covered securities that the broker-dealer or associated person sold on behalf of that group of issuers (or ''related issuers'') during that period. Such amounts also would be depicted prospectively as a reasonable estimate of such revenue sharing payments expected to be received in the current fiscal year based on present arrangements or understandings, along with a statement of the amount of revenue sharing payments received in the prior fiscal quarter.[71]

Request for comment. Commenters are invited to discuss the possible contours of an Internet-based disclosure requirement for revenue sharing payments as an alternative to disclosure in point of sale or confirmation documents, including the adequacy of the disclosure set forth in Attachment 15. Commenters particularly are invited to discuss the following:

Q. Would such disclosure adequately set forth information about the various possible payment streams? Would more particularized disclosure better alert customers to the resulting conflicts of interest? If so, how should we tailor the required disclosure to do so? Should we require broker-dealers to state the total amounts of revenue sharing payments received by source? Should the Commission instead require disclosure of the source and amounts of payments at the point of sale or on transaction confirmations?

Q. How should customers be informed about revenue sharing payments and other payments that are not subject to formal agreements, but

company. The proposal also would require broker-dealers to use the Internet or a toll-free telephone number to provide updated information, or else to send updated information to customers semi-annually. Among other features, that NASD proposal would require broker-dealers to rank fund families that make revenue sharing payments in descending order of amounts paid to the broker-dealer (without having to identify the actual amount of compensation received). It also would require broker-dealers to state whether they pay differential compensation in the form of heightened payout ratios, and to identify the investment companies favored by those arrangements. *See* NASD Notice to Members 03–54 (Sept. 2003).

The approach to Internet-based disclosure we are considering here would focus on quantifying compensation resulting from a customer's purchase of a specific covered security. Thus, the approach described here would appear to complement the approach described by NASD (which has yet to be submitted as a proposed rule change).

[68] Those payments provide sales incentives that create conflicts between broker-dealers' financial interests and their agency duties to customers. Revenue sharing payments may lead a broker-dealer to use ''preferred lists'' that explicitly favor the distribution of certain funds. Revenue sharing payments also may lead to favoritism that is less explicit but just as real, such as through broker-dealer practices allowing funds that make revenue sharing payments to have special access to broker-dealer sales personnel, and through other incentives or instructions that a broker-dealer may provide to managers or salespersons. *See, e.g., In the matter of Edward D. Jones & Co.,* Securities Act Release No. 8520 (Dec. 22, 2004) (broker-dealer violated antifraud provisions of Securities Act and Exchange Act by failing to disclose conflicts of interest arising from receipt of revenue sharing, directed brokerage payments and other payments from ''preferred'' families that were exclusively promoted by broker-dealer); *In the Matter of Morgan Stanley DW Inc.,* Securities Act Release No. 8339 (Nov. 17, 2003) (broker-dealer violated antifraud provisions of Securities Act by failing to disclose special promotion of funds from families that paid revenue sharing and portfolio brokerage).

Revenue sharing payments also can play a role in compensating broker-dealers that distribute no-load funds through mutual fund ''supermarkets.'' Those broker-dealers may charge commissions for some fund purchases, but provide commission-free purchases of funds from fund complexes that make revenue sharing payments. Funds that make revenue sharing payments also may be placed on lists of mutual funds that a broker-dealer suggests or otherwise highlights to customers.

[69] In asking above about revenue sharing disclosure requirements at the point of sale, we discuss potential definitions and exclusions that may appropriately focus the disclosure requirement in that way.

[70] Payments linked to a broker-dealer's recent sales of shares issued by a fund complex give the broker-dealer an incentive to sell more shares of that fund complex. Payments linked to the asset-based fees that the adviser earns in connection with shares of a fund complex held by broker-dealer customers give the broker-dealer an incentive to sell more shares of, and keep its customers invested in, that fund complex. Miscellaneous payments such as sponsorships of broker-dealer training programs further promote the sale of shares on behalf of the fund complex.

[71] Retrospective information would have the benefit of being comprehensive, while prospective information would have the benefit of being more timely. Such prospective information alone may be incomplete given that broker-dealers and fund families may adjust revenue sharing payments to reflect prior sales efforts, and due to the informal nature of some of these arrangements. There may be special disclosure challenges because certain promotional payment arrangements are not reduced to written agreements. Under such an approach, broker-dealers would have to fairly and accurately depict their understandings, together with any ambiguities in compensation that may exist. Investors would then have to weigh the significance of those ambiguities.

instead take the form of ad hoc payment arrangements?

Q. How should customers be informed about prospective revenue sharing payments that a broker-dealer expects to receive in the future but that have not been paid or accrued?

Q. How should investors be informed of payments received by the insurance company issuing a variable product from the investment advisers of underlying funds? What types of conflicts do these payments raise?

B. Disclosure of Certain Payments Out of Issuer Assets

Internet-based disclosure also might be appropriate for certain payments that broker-dealers receive out of fund assets. These payments may not pose the same conflicts of interest as certain payments received from investment advisers and other non-issuers but they may provide incentives for broker-dealers to distribute covered securities. For example, payments out of issuer assets may represent compensation for the broker-dealer's own recordkeeping activities. Even when payments out of fund assets could be justified as *bona fide* compensation for non-distribution services, they may constitute a direct financial incentive for a broker-dealer to favor fund complexes that make such payments.[72]

Attachment 15 illustrates how such payments might be depicted in a way that would allow customers to evaluate the significance of the incentives they provide. As shown in this illustration, the broker-dealer would be required to disclose a summary of all payments it receives from the issuer of the covered security (or from the issuer of an underlying covered security in the case of two-tiered products). Such amounts would be disclosed retrospectively (as a statement of the total dollars of such payments that the broker-dealer received from such issuer in the prior fiscal year) and prospectively (as a reasonable estimate of such payments that the broker-dealer can expect to receive from such issuer in the current fiscal year, based on present arrangements or understandings).

Request for comment. Would requiring a broker-dealer to disclose certain payments received from issuers discussed above be useful to investors? Commenters particularly are invited to discuss the following:

Q. Would disclosure of amounts received from issuers, with specific exclusions for brokerage commissions, mailing fees and other payments disclosed elsewhere, appropriately provide customers with information about issuer payments that can pose conflicts of interest? Should such a disclosure requirement be more specific, perhaps by focusing on payments for transfer agent-related activities or other recordkeeping-related activities?

Q. Should such a disclosure requirement encompass payments received by certain affiliates of broker-dealers? To what extent do broker-dealer affiliates receive such payments in connection with securities distributed by broker-dealers? How could required disclosure of those issuer payments be implemented for payments received by associated persons of a broker-dealer?

Q. Are there other payments or economic benefits that broker-dealers receive from issuers or their affiliates that we should require broker-dealers to disclose?

Q. Broker-dealers particularly are invited to discuss how the amounts they receive via such payments compare to the costs they would incur to provide such services (particularly costs they would not otherwise incur as part of their normal course of business).

C. Disclosure of Other Distribution-Related Factors That Influence Broker-Dealer Sales of Covered Securities

Internet-based disclosure also may be appropriate for informing customers about factors in addition to those disclosed at point of sale that influence broker-dealer sales of covered securities. For example, as noted above, some broker-dealers give fund complexes that make revenue sharing payments special marketing access to broker-dealer sales personnel that is not available to other fund complexes. Some broker-dealers may have a practice of restricting recommendations of securities to the funds of complexes that make revenue sharing payments, or of restricting placement of securities on a highlighted list to only those funds of complexes that make revenue sharing payments. We understand that some broker-dealers may require that a fund complex pay asset-based distribution fees under a rule 12b–1 plan with regard to other mutual funds of that complex, including mutual funds that are closed to new investors, as a condition of selling one or more other funds of that fund complex.

Additional information about these practices may help customers evaluate broker-dealer sales incentives. Attachment 15 illustrates the types of disclosure that could result if broker-dealers were required to use the Internet to set forth any explicit or implicit arrangement by which they condition any distribution-related benefit to a fund or fund complex upon the receipt of certain compensation or other economic benefits. In fulfilling their disclosure obligations under such a provision, a broker-dealer would need to comprehensively inform customers about all arrangements by which distribution is conditioned on special compensation or benefits. Under this form, required disclosures would include, if applicable, statements: (i) That the broker-dealer does not sell no-load funds; (ii) that the broker-dealer provides preferred salesperson access to fund complexes or other issuers that make revenue sharing payments; (iii) that the broker-dealer only distributes covered securities whose issuer pays a certain threshold of recordkeeping-related fees; (iv) that all covered securities on the broker-dealer's ''preferred'' or ''select'' list of securities make revenue sharing payments to the broker-dealer; or (v) that the broker-dealer conditions distribution of any covered security of the fund complex or other issuer to the receipt of rule 12b-1 fees in connection with other covered securities of that fund complex or other issuer.

Request for comment. Should the Commission adopt a requirement for broker-dealers to disclose additional distribution-related conditions? If adopted, should this disclosure be on the Internet? Would such disclosures assist customers in understanding broker-dealer financial incentives?

Q. To what extent do broker-dealers currently have a practice of conditioning recommendations and placement on preferred lists to fund families that make revenue sharing payments? To what extent do broker-dealers currently condition distribution of funds on receipt of rule 12b-1 fees from all funds in the complex?

Q. Should any rules explicitly identify certain arrangements that would have to be disclosed under this type of provision, such as those in statements (i) through (v) above? If so, which arrangements should be identified with particularity in a rule?

[72] Other payments out of issuer assets would not appear to pose a significant influence on broker-dealer distribution. For example, payments from issuers to compensate broker-dealers for mailing certain documents (other than the prospectus) to customers are subject to cost limits imposed by NASD rules, and as such may not be expected to provide compensation for distribution services. *See* NASD rule IM–2260 (approved rates of reimbursement).

Also, as noted above, payments from funds for brokerage services are barred from being used to finance distribution. In September 2004, we amended rule 12b–1 under the Investment Company Act to prohibit the use of fund brokerage to compensate broker-dealers for selling fund shares. *See* Investment Company Act Release No. 26591 (Sept. 2, 2004), 69 FR 54728 (Sept. 9, 2004).

Should such conditions also have to be disclosed at the point of sale?

D. Disclosure of Compensation That Broker-Dealers Receive in Connection With Distributing Covered Securities

An Internet-based disclosure requirement could encompass disclosure of the concessions that broker-dealers earn in connection with a transaction, and annual asset-based payments that broker-dealers would expect to receive for selling the covered security or for providing services to the customer's account (including payments denoted as compensation for providing shareholder services, as well as other distribution-related compensation). Such disclosures would include payments in connection with underlying securities purchased via two-tiered products, such as 529 savings plans and variable insurance products. As depicted in Attachment 15, such payments would be quantified based on model purchases to allow investors to see how much of a dealer concession the broker-dealer would receive in connection with various transaction sizes or asset amounts.

Request for comment. Should the Commission adopt an Internet-based disclosure requirement of broker-dealer compensation arrangements, including dealer concessions and annual asset-based payments that broker-dealers would expect to receive for selling the covered security or for providing services to the customer's account? Commenters specifically are invited to discuss whether the Commission should require such Internet-based disclosure as a supplement to point of sale and confirmation disclosure. In addition, commenters are requested to discuss the following:

Q. Would disclosure about dealer concessions and annual asset-based fees earned by each broker-dealer effecting a transaction appropriately encompass all standard types of compensation?

Q. How should disclosure of such amounts be quantified? Would requiring thresholds of $1,000, $50,000 and $100,000 be appropriate? Should disclosure of compensation related to front-end sales fees reflect a model purchase of $1,000 and any breakpoint threshold?

Q. How should such disclosure requirements be applied to broker-dealer underwriters for mutual funds and other covered securities?[73] Would investors benefit from disclosure of underwriter compensation in the same way they would benefit from disclosure of the compensation received by selling broker-dealers? Would that benefit depend on the types of compensation received or an underwriter's direct versus indirect interaction with a customer, such as instances in which an underwriter is also broker of record for the customer (so-called ''orphan accounts'')?

Q. How should such disclosure requirements be applied to broker-dealers that clear purchase transactions on behalf of other broker-dealers? Would it be adequate for a clearing firm to satisfy its disclosure requirements by setting forth its fee schedule for clearing covered securities, and disclosing the source of its compensation (*e.g.*, selling broker-dealer or mutual fund complex)?[74] How would customers be informed about the conflicts of interest posed by promotional arrangements between clearing broker-dealers and fund complexes, such as arrangements by which a fund complex agrees to pay ticket charges imposed by a clearing broker-dealer, so the charges are not passed on to selling broker-dealers and their sales personnel?

E. Disclosure of Differential Compensation

The Internet, supplemented with investors' ability to call toll-free numbers to request mailed copies of required disclosures made on the Internet, also may provide a useful medium for broker-dealers to provide customers with quantitative information about differential compensation practices. As noted in the Proposing Release, conflicts of interest may result from practices by which an associated person is paid a heightened percentage of the broker-dealer's compensation when he or she sells a fund that is favored by the broker-dealer (such as a fund that is affiliated with the broker-dealer or that makes revenue sharing payments to the broker-dealer), and practices by which an associated person earns more for selling ''class B'' shares with deferred sales fees than other share classes because of the higher sales compensation received by the broker-dealer firm for selling class B shares. Point of sale disclosure of differential compensation practices as proposed, however, would not cover situations in which an associated person has a financial incentive to sell securities that pay a relatively high dealer concession or commission to the broker-dealer, even though that would translate into a relatively high payment to the associated person.[75]

Requiring Internet-based disclosure of a broker-dealer's compensation practices, however, may provide an appropriate forum for disclosure of additional compensation incentives to sales personnel and other associated persons. Attachment 15 depicts how, under such a requirement, a broker-dealer could use the Internet to illustrate the compensation incentives associated with relatively high dealer concessions, compared to comparable covered securities.[76] Under such an approach, multiple covered securities may be ''comparable'' if they are not materially different with respect to their investment objectives and goals, its principal investment strategies, and the principal risks that would result from investing in such a covered security. That disclosure also illustrates how the Internet could be used to illustrate and quantify differential compensation in connection with the sale of a class of covered securities that charges a deferred sales fee, and information about the payment of any other form of differential compensation to any associated persons in connection with the purchase of the covered security.

Request for comment. Should the Commission require broker-dealers to make enhanced disclosure of differential compensation on the Internet? Should the Commission also require broker-dealers to permit customers the ability to request the Internet-based disclosures be mailed to them by calling a toll-free telephone

[73] The amounts earned by an underwriter may be difficult to quantify in a fee schedule because an underwriter may retain the residual between sales fees paid by investors and dealer concessions paid to selling brokers, rather than a preset amount. That particularly would be an issue in the case of share classes with a deferred sales load.

[74] Disclosure of the source of clearing firm compensation would appear appropriate because some clearing broker-dealers enter into promotional arrangements through which clearing fees are paid by a fund complex rather than by selling broker-dealers.

[75] That type of compensation incentive was not proposed to be captured at the point of sale due to the need to keep point of sale disclosure simple and the risk that such disclosure either would invariably lead to a ''yes'' answer or else would be too unwieldy at the point of sale.

[76] A broker-dealer might determine that a particular set of funds are ''comparable'' if they fall within the same grouping or categorizations provided by major vendors of mutual fund data. Such groupings may focus on particular investment styles as ''mid cap value'' or industry sector funds, as well as distinguishing between index funds and actively managed funds. Such a type of highly focused categorization appears appropriate for disclosure of differential compensation, because that focus would appear consistent with differences in broker-dealer compensation. Such a type of ''comparable'' categorization standard is intended to avoid comparisons that would invariably lead to ''yes'' answers, such as comparisons of load funds with no-load funds. Broker-dealers would have to determine whether or not the compensation associated with a particular mutual fund is above the average compensation associated with the applicable category.

number? Commenters particularly are invited to discuss the following:

Q. Should we require broker-dealers to identify any payment practice by which the issuer or underwriter of a covered security pays the broker-dealer a higher dealer concession than the average dealer concession paid in connection with the distribution of comparable covered securities, when that would lead an associated person of the broker-dealer to receive more in connection with the sale of the covered security than would be received in connection with the sale of the same dollar amount of a comparable covered security that pays an average dealer concession? For those purposes, should we state that the term ''comparable'' means another covered security that is not materially different with respect to its investment objectives and goals, its principal investment strategies, and the principal risks that would result from investing in such a covered security?

Q. Would such a requirement be feasible to implement? Would the resulting information be useful to investors? Commenters may wish to suggest criteria for identifying ''comparable'' funds, or suggest existing databases or assessments that would be useful in identifying practical fund categories. For example, would it be appropriate for groupings of ''comparable'' funds to be based on particular investment styles such as ''mid cap value'' or industry sector funds? Would it be appropriate for such groupings to distinguish between index funds and actively managed funds? Would it be appropriate for broker-dealer to determine that a particular set of funds are ''comparable'' if they fall within the same grouping set forth by a nationally recognized categorization of mutual funds, such as categorizations provided by major vendors of mutual fund data? Should the Commission seek to develop and publish lists of ''comparable'' covered securities for these purposes? Alternatively, even if a focus on relatively narrow categories of funds would accurately reflect differences in broker-dealer compensation among categories, should the groupings of funds be broader to more fully inform investors about the differences in incentives facing broker-dealer personnel? [77]

Q. Should Internet disclosure of differential compensation related to share classes sold reflect higher payments for selling class C shares as well as for selling class B shares?

F. Format of Disclosure

The format of disclosure would be critical to any Internet disclosure requirements, as well as disclosure through any other media. Information may be presented on the Internet in a way that is intended to obscure, rather than to provide effective disclosure. Moreover, many investors may not have Internet access or choose to use the Internet. Accordingly, we would require that broker-dealers maintain a toll-free telephone number which investors could call to request that a copy of the Internet-based disclosure be mailed to them.

To promote clear disclosure, we propose to require information to be highly visible, and depicted in a tabular format that is readily communicated to investors, using layout and presentation that is reasonably calculated to draw attention to the required information, and using terminology that is intended to clearly convey required information to the investor.[78] Other requirements that we could adopt as appropriate could include: (i) That the web site not (1) have password protection, (2) require entry of identifying information or e-mail addresses, or (3) otherwise restrict access (including the use of ''cookies''); [79] (ii) that disclosure be assessed through a prominent link on the principal Internet homepage of the broker-dealer; [80] and (iii) that the web site have a Uniform Resource Locator (URL) that is disclosed in conjunction with all point of sale and confirmation disclosures that the broker-dealer is required to make. We also could require broker-dealers to maintain toll-free telephone numbers by which investors can request a mailed copy of the disclosure information.[81]

Any Internet disclosure requirement should require broker-dealers to depict information that is specific to share classes, as applicable.[82] We would anticipate that multiple broker-dealers may opt to maintain disclosure on a single webpage, with each recipient of a payment clearly identified.[83]

Request for comment. How could an Internet disclosure rule be crafted to ensure that investors have clear and timely access to information? Commenters particularly are invited to discuss the following:

Q. Should an Internet-based disclosure requirement mandate the use of a standardized template or form, or the use of certain terminology, perhaps as defined by the Commission? Commenters are invited to suggest models.

Q. Should broker-dealers be permitted to establish links to third-party web sites where definitions or explanatory information would be available? Would this help investors better understand the meaning of particular terms without providing information that potentially is biased or otherwise misleading? Alternatively, would such a linkage to third-party web sites have the effect of seeming to endorse that information? Commenters may wish to refer to existing Internet web sites that contain glossaries or other models of terminology or explanatory materials that could effectively improve investor understanding of this information. Should the Commission instead adopt standardized definitions to be used in this context?

Q. What are the costs to broker-dealers of making the kinds of Internet-based disclosures discussed in this section? In addition, what are the cost savings to broker-dealers of making such Internet-based disclosures in lieu of making such disclosures at the point-of-sale or on transactions confirmations?

[77] An analogous issue arise in the distinct context of calculating comparative information. Comparative information should provide investors with context about whether a particular fund has relatively high or low ownership costs. In calculating comparative information, using groupings of securities that are overly narrow would not lead to data that adequately informs investors about the ownership costs associated with alternative investment. When identifying the presence or absence of differential compensation, however, groupings of securities that are overly broad (such as including no-load funds with load funds) may invariably lead to ''yes'' answers, which would not appear useful to investors.

[78] Such a requirement would prevent broker-dealers from providing responsive information that is obscured with excess verbiage. Such a requirement would mean that the information must be disclosed in tabular form in a highly visible location within a disclosure document, possible using easily navigable links within a particular webpage.

[79] Such a requirement that the web site not be restricted in access does not preclude the broker-dealer from taking down the web sit on occasion as necessary to perform technical maintenance.

[80] Such a requirement would not apply to a broker-dealer that does not maintain a principal Internet homepage.

[81] Moreover, we could require that broker-dealers update Internet-disclosed information promptly to maintain accuracy, and that information about payments received in the prior fiscal year be updated within 30 days of the end of that fiscal year.

[82] Some relevant disclosures, such as dealer concessions and trailing commissions, may vary by the share class of the covered security. Other disclosures, such as revenue sharing payments, would appear less likely to differ according to share class.

[83] More than one broker-dealer may receive compensation in connection with a customer's purchase of a covered security. For example, a selling broker may receive the bulk of a sales fee, while the fund distributor retains a small portion of that fee. Also, introducing firms and clearing firms both may receive revenue sharing payments from a fund complex.

Would there be cost savings or other efficiencies from maintaining disclosures for multiple broker-dealers on a single web page?

Q. Is it appropriate and useful for the Commission to require that broker-dealers update Internet-disclosed information promptly to maintain accuracy? Should the Commission also require that broker-dealers update information about payments received in the prior fiscal year within 30 days of the end of that fiscal year?

Q. Would it be useful to investors if we require broker-dealers to maintain a toll-free number investors can call to request copies of the Internet-based disclosure be mailed to them? What procedures would be necessary to ensure compliance with this requirement? Commenters may wish to discuss the cost to broker-dealers of implementing such a requirement.

V. Prospectus Disclosure of Revenue Sharing Payments

Along with the amendments discussed above, the Commission proposed to amend Form N–1A in order to improve disclosure in fund prospectuses of revenue sharing payments.[84] If any person within a fund complex makes revenue sharing payments, the proposed amendment would have required a fund to disclose that fact in its prospectus and also to disclose that specific information about revenue sharing payments is included in the confirmation and point of sale disclosure as originally proposed.[85] We are considering whether to adopt modified or additional Form N–1A requirements to complement the disclosure by broker-dealers on which we are requesting comment in this release. Specifically, we are considering whether it may be helpful to investors to receive additional information in a fund's prospectus regarding revenue sharing payments.[86]

Request for comment. Are prospectus disclosure requirements regarding revenue sharing payments, beyond those we originally proposed, appropriate or necessary? Specifically, we seek comment on whether a brief description of such revenue sharing payments should be required in a mutual fund's prospectus.

Q. If any person within a fund complex makes revenue sharing payments, should a fund be required to disclose this fact in its prospectus? Should a fund be required to include information relating to these payments, such as the services provided in return for the payments; the factors considered in determining the payments to be made (including the number of fund shares sold by a financial intermediary, the amount of fund assets held through that intermediary, the redemption rate of fund shares held through that intermediary, and the quality of the intermediary's relationship with the fund's principal underwriters); and the basis on which such payments are made (*e.g.*, percentage of total sales of fund shares by a financial intermediary, percentage of total fund assets attributable to that financial intermediary)? Should a fund also be required to disclose the maximum amount of revenue sharing payments to a single financial intermediary annually? If so, how should this disclosure be stated (*e.g.*, as a dollar amount, a percentage of net assets, or otherwise), and what period of time should it cover (*e.g.*, the most recent fiscal year, the projected total for the current fiscal year, or some other period)? Should any other information be required?

Q. Should we also require disclosure of the aggregate amounts of revenue sharing payments that a fund makes to all financial intermediaries? If so, how should this disclosure be stated (*e.g.*, as a dollar amount, a percentage of net assets, or otherwise), and what period of time should it cover (*e.g.*, the most recent fiscal year, the projected total for the current fiscal year, or some other period)? Should any other information be required?

Q. We also invite comment on the costs associated with providing enhanced disclosure in the prospectus relating to revenue sharing payments, including quantification of such payments. To what extent would the disclosure of specific information relating to such payments increase compliance costs?

Q. If specific information about revenue sharing payments is available through a broker-dealer's Web site or toll-free telephone number, should a fund be required to disclose that fact in its prospectus, either in addition or as an alternative to other disclosure?

Q. For purposes of enhanced prospectus disclosure of revenue sharing payments, what definition of ''revenue sharing'' should the Commission use? Should it be consistent with that used in connection with the proposed broker-dealer disclosure rules? Commenters are asked to address, among other things, the questions about the definition of ''revenue sharing'' that are raised above in the context of the proposed broker-dealer disclosure requirements.[87]

Q. Commenters are also asked to address what, if any, disclosure requirements should be added to Forms N–3, N–4, and N–6 with respect to revenue sharing payments? In this context, we invite commenters to address the same questions raised above relating to disclosure of revenue sharing payments by mutual funds, as well as any other relevant matters.

VI. General Request for Comment

In addition to the supplemental requests for comment set forth above, the Commission renews its requests for comment on the proposals that were published in the Proposing Release. In its evaluation of further rulemaking action, the Commission will consider, in addition to the comments received in response to this release, all comments received in response to the Proposing Release.

By the Commission.

Dated: February 28, 2005.

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 8010–01–P

[84] *See* Proposing Release, Section VI. The Commission also proposed amendments to Form N–1A that would enhance disclosure of sales loads in the fund prospectus.

[85] Proposed subparagraph (c) to Item 8 (now Item 7) of Form N–1A.

[86] We recently brought enforcement cases against fund advisers concerning their failure to adequately disclose arrangements for increased ''shelf space'' with various broker-dealer. *See In the Matter of Franklin Advisers, Inc. and Franklin/Templeton Distributors, Inc.,* Investment Advisers Act Release No. 2337 (December 13, 2004); *In the Matter of PA Fund Management LLC, et al.,* Investment Advisers Act Release No. 2295 (September 15, 2004); *In the Matter of Massachusetts Financial Services Company,* Investment Advisers Act Release No. 2224 (March 31, 2004).

[87] *See* the request for additional comment relating to the proposed definition of ''revenue sharing'' *supra,* part II.A.3.

[B-D Name]

Date: _____

Fees you pay and our conflicts of interest for purchases of AAA Equity Fund – Class A shares (AAAEA)

Ask before you buy
We are required to tell you about fees and conflicts of interest that may affect your decision to buy shares of this fund. Ask us to fill in the blanks below for details about the fees you must pay.

Volume discount
You may qualify for fee discounts if you or members of your family hold other shares from this fund family, or if you agree to make additional purchases. Ask us for more information about these discounts.

Fees

You pay when you buy

You pay a sales fee for Class A shares when you purchase them — up front. The amount of the up front fee you pay is based on your total payment amount.

Do you want us to fill in the blanks for you?
We must write in amounts for your investment at your request.

Total payment amount	Estimated up front fee you pay	Your investment amount	Up front fee as % of your investment amount
$	$	$	%
$1,000.00	**$57.50**	$942.50	**6.10%**
$50,000.00	**$2,250.00**	$47,750.00	**4.71%**
$100,000.00	**$3,500.00**	$96,500.00	**3.63%**

You also pay each year

In addition to the up front sales fee, you will pay ongoing fees every year you hold shares in the fund. These fees are based on the value of your investment, and include:

Distribution fees	0.25%
(we receive all or almost all of the distribution fees)	
Management fees	0.75%
Other expenses	0.92%
Total annual fee %	**1.92%**

Do you want us to fill in the blanks for you?
We must write in amounts for your investment at your request.
This estimate assumes the value of your investment does not change.

Investment value	Estimated 1st year annual fees you pay	Annual fee %
$	$	1.92%
$1,000.00	**$19.20**	**1.92%**
$50,000.00	**$960.00**	**1.92%**
$100,000.00	**$1,920.00**	**1.92%**

In addition, you pay each year:
Account fee: **$100.00**

Conflicts of interest

Does the fund or its affiliates pay us extra to promote this fund over other funds?	**YES**
Do we pay our personnel more for selling this fund than for selling other funds we offer?	**NO**

Find out more

Fund prospectus
You should consider all the costs, goals and risks associated with any fund before you buy. Read about this information in the fund prospectus. We can provide you with a copy today, or you may obtain one by calling (800) 999-9999 or on line at www.aaafunds.com/equityfund/prospectus.

Summary of special incentives
Ask us for a summary of the special incentives we receive to sell this fund. This information is not available in the fund prospectus. You can request this information by calling (800) 888-8888 or review it online at www.brokerwebsite.com/specialincentives.

Attachment 1
Mutual Fund Class A – Point of Sale

Date: _____

[B-D Name]

Fees you pay and our conflicts of interest for purchases of AAA Equity Fund – Class B shares (AAAEB)

Ask before you buy
We are required to tell you about fees and conflicts of interest that may affect your decision to buy shares of this fund. Ask us to fill in the blanks below for details about the fees you must pay.

Fees

You pay when you sell

You pay a sales fee for Class B shares when you sell them—at the back end. This fee varies with both the value of the shares you sell and the length of time you hold them.

Do you want us to fill in the blanks for you?
We must write in amounts for your investment at your request.
This estimate assumes the value of your investment does not change.

Investment amount	Estimated maximum back end sales fee	Maximum back end fee %
$	$	6.10%
$1,000.00	**$61.00**	**6.10%**
$50,000.00	**$3,050.00**	**6.10%**
$100,000.00	**$6,100.00**	**6.10%**

You also pay each year

In addition to the back-end sales fee, you will pay ongoing fees every year you hold shares in the fund. These fees are based on the value of your investment, and include:

Distribution fees	1.00%
(we receive all or almost all of the distribution fees)	
Management fees	0.75%
Other expenses	0.92%
Total annual fee %	**2.67%**

Do you want us to fill in the blanks for you?
We must write in amounts for your investment at your request.
This estimate assumes the value of your investment does not change.

Investment value	Estimated 1st year fees	Annual fee %
$	$	2.67%
$1,000.00	**$26.70**	**2.67%**
$50,000.00	**$1,335.00**	**2.67%**
$100,000.00	**$2,670.00**	**2.67%**

Conflicts of interest

Does the fund or its affiliates pay us extra to promote this fund over other funds?	**YES**
Do we pay our personnel more for selling this fund than for selling other funds we offer?	**NO**
Do we pay our personnel more for selling Class B shares than for selling other share classes of the same fund?	**YES**

Find out more

Fund prospectus
You should consider all the costs, goals and risks associated with any fund before you buy. Read about this information in the fund prospectus. We can provide you with a copy today, or you may obtain one by calling (800) 999-9999 or on line at www.aaafunds.com/equityfund/prospectus.

Summary of special incentives
Ask us for a summary of the special incentives we receive to sell this fund. This information is not available in the fund prospectus. You can request this information by calling (800) 888-8888 or review it online at www.brokerwebsite.com/specialincentives.

Attachment 2
Mutual Fund Class B – Point of Sale

[B-D Name]

Date: _____

Fees you pay and our conflicts of interest for purchases of AAA Equity Fund – Class C shares (AAAEC)

Ask before you buy

We are required to tell you about fees and conflicts of interest that may affect your decision to buy shares of this fund. Ask us to fill in the blanks below for details about the fees you must pay.

Fees

You will pay each year

For Class C shares, you will pay ongoing fees every year you hold shares in the fund. These fees are based on the value of your investment, and include:

Distribution fees	1.00%
(we receive all or almost all of the distribution fees)	
Management fees	0.75%
Other expenses	0.92%
Total annual fee %	**2.67%**

Do you want us to fill in the blanks for you?

We must write in amounts for your investment at your request. This estimate assumes the value of your investment does not change.

Investment value	Estimated 1st-year fees	Annual fee %
$	$	2.67%
$1,000.00	**$26.70**	**2.67%**
$50,000.00	**$1,335.00**	**2.67%**
$100,000.00	**$2,670.00**	**2.67%**

Conflicts of interest

Does the fund or its affiliates pay us extra to promote this fund over other funds?	**YES**
Do we pay our personnel more for selling this fund than for selling other funds we offer?	**NO**
Do we pay our personnel more for selling Class C shares than for selling other share classes of the same fund?	**YES**

Find out more

Fund prospectus

You should consider all the costs, goals and risks associated with any fund before you buy. Read about this information in the fund prospectus. We can provide you with a copy today, or you may obtain one by calling (800) 999-9999 or on line at www.aaafunds.com/equityfund/prospectus.

Summary of special incentives

Ask us for a summary of the special incentives we receive to sell this fund. This information is not available in the fund prospectus. You can request this information by calling (800) 888-8888 or review it online at www.brokerwebsite.com/specialincentives.

Attachment 3

Mutual Fund Class C – Point of Sale

Date: _____

[B-D Name]

Fees you pay and our conflicts of interest for purchases of [STATE] 529 Savings Plan Growth Portfolio – Class A

Ask before you buy

We are required to tell you about fees and conflicts of interest that may affect your decision to buy shares of this portfolio. Ask us to fill in the blanks below for details about the fees you must pay.

Your state's tax incentives

Many states offer their residents tax deductions and other benefits for investing in their 529 college savings plans, but not for investing in other states' plans. If you live in a state that offers these tax deductions or other benefits, you should consider whether investing in a college savings plan sponsored by your state is best for you.

Fees

You pay when you buy

You pay a sales fee when you purchase Class A shares of this 529 college savings plan – up front. The amount of the up front fee you pay is based on your total payment amount.

Do you want us to fill in the blanks for you?

We must write in amounts for your investment at your request.

Total payment amount	Estimated up front fee you pay	Your investment amount	Up front fee as % of your investment amount
$	$	$	%
$1,000.00	**$57.50**	$942.50	**6.10%**
$50,000.00	**$2,250.00**	$47,750.00	**4.71%**
$100,000.00	**$3,500.00**	$96,500.00	**3.63%**

In addition when you open your account, you will pay:

Application fee: **$75.00** ([State] residents)
$95.00 (non-residents)

You also pay each year

In addition to the up front sales fee, you will pay ongoing fees every year you hold this portfolio. These fees are based on the value of your investment, and include:

Distribution fees *(we receive all or almost all of the distribution fees)*	0.25%
Management fees	0.75%
Other expenses	1.18%
State administrative fees	0.20%
Total annual fee %	**2.38%**

Do you want us to fill in the blanks for you?

We must write in amounts for your investment at your request.
This estimate assumes the value of your investment does not change.

Investment value	Estimated 1st year annual fees you pay	Annual fee %
$	$	2.38%
$1,000.00	**$23.80**	**2.38%**
$50,000.00	**$1,190.00**	**2.38%**
$100,000.00	**$2,380.00**	**2.38%**

Conflicts of interest

Are we paid extra to promote this college savings plan over others?	**YES**
Do we pay our personnel more for selling this college savings plan than for selling other plans we offer?	**NO**

Find out more

Plan offering document

You should consider all the costs, goals and risks associated with any college savings plan before you buy. Read about this information in the college savings plan's offering document. We can provide you with a copy today, or you may obtain one by calling (800) 999-9999 or on line at www.aaafunds.com/state529plan/offeringdocument.

Summary of special incentives

Ask us for a summary of the special incentives we receive to sell this college savings plan. This information is not available in the plan offering document. You can request this information by calling (800) 888-8888 or review it online at www.brokerwebsite.com/specialincentives.

Attachment 4
529 Savings Plan Class A – Point of Sale

Date: _____

[B-D Name]

Fees you pay and our conflicts of interest for purchases of [STATE] 529 Savings Plan Growth Portfolio – Class B

Ask before you buy

We are required to tell you about fees and conflicts of interest that may affect your decision to buy shares of this portfolio. Ask us to fill in the blanks below for details about the fees you must pay.

Your state's tax incentives

Many states offer their residents tax deductions and other benefits for investing in their 529 college savings plans, but not for investing in other states' plans. If you live in a state that offers these tax deductions or other benefits, you should consider whether investing in a college savings plan sponsored by your state is best for you.

Fees

You pay when you sell

You pay a sales fee for Class B shares of this 529 college savings plan when you sell them—at the back end. This fee varies with both the value of the shares you sell and the length of time you hold them.

Do you want us to fill in the blanks for you?

We must write in amounts for your investment at your request. This estimate assumes the value of your shares does not change.

Investment amount	Estimated maximum back end sales fee	Maximum back end fee %
$	$	6.10%
$1,000.00	**$61.00**	**6.10%**
$50,000.00	**$3,050.00**	**6.10%**
$100,000.00	**$6,100.00**	**6.10%**

In addition when you open your account, you will pay:

Application fee: **$75.00** ([State] residents)
$95.00 (non-residents)

You also pay each year

In addition to the back end sales fee, you will pay ongoing fees every year you hold this portfolio. These fees are based on the value of your investment, and include:

Distribution fees	1.00%
(we receive all or almost all of the distribution fees)	
Management fees	0.75%
Other expenses	1.18%
State administrative fees	0.20%
Total annual fee %	**3.13%**

Do you want us to fill in the blanks for you?

We must write in amounts for your investment at your request. This estimate assumes the value of your investment does not change.

Investment value	Estimated 1st year annual fees you pay	Annual fee %
$	$	3.13%
$1,000.00	**$31.03**	**3.13%**
$50,000.00	**$1,565.00**	**3.13%**
$100,000.00	**$3,130.00**	**3.13%**

Conflicts of interest

Are we paid extra to promote this college savings plan over others?	**YES**
Do we pay our personnel more for selling this college savings plan than for selling other plans we offer?	**NO**
Do we pay our personnel more for selling Class B shares than for selling other share classes of the same 529 college savings plan?	**YES**

Find out more

Plan offering document

You should consider all the costs, goals and risks associated with any college savings plan before you buy. Read about this information in the college savings plan's offering document. We can provide you with a copy today, or you may obtain one by calling (800) 999-9999 or on line at www.aaafunds.com/state529plan/offeringdocument.

Summary of special incentives

Ask us for a summary of the special incentives we receive to sell this college savings plan. This information is not available in the plan offering document. You can request this information by calling (800) 888-8888 or review it online at www.brokerwebsite.com/specialincentives.

Attachment 5
529 Savings Plan Class B – Point of Sale

Date: _____

[B-D Name]

Fees you pay and our conflicts of interest for purchases of [STATE] 529 Savings Plan Growth Portfolio – Class C

Ask before you buy

We are required to tell you about fees and conflicts of interest that may affect your decision to buy shares of this portfolio. Ask us to fill in the blanks below for details about the fees you must pay.

Your state's tax incentives

Many states offer their residents tax deductions and other benefits for investing in their 529 college savings plans, but not for investing in other states' plans. If you live in a state that offers these tax deductions or other benefits, you should consider whether investing in a college savings plan sponsored by your state is best for you.

Fees

You pay each year

For Class C shares, you will pay ongoing fees every year you hold this portfolio. These fees are based on the value of your portfolio, and include:

Distribution fees *(we receive all or almost all of the distribution fees)*	1.00%
Management fees	0.75%
Other expenses	1.18%
State administrative fees	0.20%
Total annual fee %	**3.13%**

Do you want us to fill in the blanks for you?

We must write in amounts for your investment at your request.
This estimate assumes the value of your investment does not change.

Investment value	Estimated 1st year annual fees you pay	Annual fee %
$	$	3.13%
$1,000.00	**$31.03**	**3.13%**
$50,000.00	**$1,565.00**	**3.13%**
$100,000.00	**$3,130.00**	**3.13%**

In addition when you open your account, you will pay:

Application fee: **$75.00** ([State] residents)
$95.00 (non-residents)

Conflicts of interest

Are we paid extra to promote this college savings plan over others?	**YES**
Do we pay our personnel more for selling this college savings plan than for selling other plans we offer?	**NO**
Do we pay our personnel more for selling Class C shares than for selling other share classes of the same 529 college savings plan?	**YES**

Find out more

Plan offering document

You should consider all the costs, goals and risks associated with any college savings plan before you buy. Read about this information in the college savings plan's offering document. We can provide you with a copy today, or you may obtain one by calling (800) 999-9999 or on line at www.aaafunds.com/state529plan/offeringdocument.

Summary of special incentives

Ask us for a summary of the special incentives we receive to sell this college savings plan. This information is not available in the fund prospectus. You can request this information by calling (800) 888-8888 or review it online at www.brokerwebsite.com/specialincentives.

Attachment 6
529 Savings Plan Class C – Point of Sale

Date: _____

[B-D Name]

Fees and our conflicts of interest for purchases of AAA Variable Annuity

Ask before you buy
We are required to tell you about fees and the conflicts of interest that may affect your decision to buy this variable annuity. Ask us to fill in the blanks below for details about the fees you must pay.

Free look right
You may be able to terminate your contract within the "free look" period and receive a refund of your payments or your contract value, which may be less. Ask us for details.

Fees

You pay when you buy

You pay a sales fee up front when you make a payment. The fee you pay is based on the amount of your payment.

Do you want us to fill in the blanks for you?
We must write in amounts for your payment at your request.

Total payment amount	Estimated up front fee you pay	Your investment amount	Up front fee as % of your investment amount
$	$	$	%
$1,000.00	**$63.50**	$936.50	**6.79%**
$50,000.00	**$3,175.00**	$46,825.00	**6.79%**
$100,000.00	**$6,350.00**	$93,650.00	**6.79%**

You pay when you sell

You pay a surrender charge if you withdraw money from your contract within a certain period of time. The charge is based on the amount you withdraw, and when you make the withdrawal. If you received a bonus credit, part of it will also be taken away.

The surrender charge % will decline over time.

Amount withdrawn	Estimated maximum surrender charge including bonus repayment	Maximum surrender charge %
$	$	9.00%
$1,000.00	**$90.00**	**9.00%**
$50,000.00	**$4,500.00**	**9.00%**
$100,000.00	**$9,000.00**	**9.00%**

You also pay each year

In addition to the surrender charge, you will pay ongoing fees every year you hold the contract. These fees will vary with the value of your contract, and may not be charged on assets held in the fixed account. You may also pay an annual contract charge of **$45**. Ask us for details.

For Each $1,000 of Contract Value, You Pay Each Year

Type of Fee	Minimum You Would Pay	Maximum You Would Pay
Investment Option Fees	$5.50 *(0.55%)*	$22.50 *(2.25%)*
Insurance Charges	$18.00 *(1.80%)*	$25.00 *(2.50%)*
Total Fees for $1,000	**$23.50 (2.35%)**	**$47.50 *(4.75%)***
$1,000.00	**$23.50**	**$47.50**
$50,000.00	**$1,175.00**	**$2,375.00**
$100,000.00	**$2,350.00**	**$4,750.00**

Conflicts of interest

Does the insurance company or its affiliates pay us extra to promote this product over other variable annuities?	**YES**
Do we pay our personnel more for selling this product than for selling other variable annuities we offer?	**NO**

Find out more

Prospectuses
You should consider all the costs, goals and risks associated with any variable annuity before you buy. Read about this information in the prospectus. We can provide you with a copy today, or you may obtain one by calling (800) 999-9999 or on line at www.aaaannuities.com/variable annuity/prospectus.

Summary of special incentives
Ask us for a summary of the special incentives we receive to sell this product. This information is not available in the prospectus. You can request this information by calling (800) 888-8888 or review it online at www.brokerwebsite.com/specialincentives

Attachment 7
Variable Annuity – Point of Sale

Confirmation of your transaction
AAA Equity Fund – Class A shares

Name:	**David Smith**
Account no:	**2345-9911**
Order date:	**October 28, 2004**
Settlement date:	**October 28, 2004**

Details of your transaction

Your total payment to purchase the fund:	$12,500.00
Up front sales fee you paid:	$722.50
Amount you invested in the fund:	**$11,777.50**
Amount invested per share (Net Asset Value):	$23.11
Number of shares bought:	509.6279

Fees

You paid when you bought

You paid a sales fee for your Class A shares up front when you purchased your shares. This fee pay was based on your total payment amount.

Your total payment	Up front sales fee you paid	Your investment amount	Up front fee as % of your investment amount
$12,500.00	**$722.50**	**$11,777.50**	**6.13%**

The up front fee % you paid differs from the up front fee % in the prospectus due to rounding. The up front fee % stated in the prospectus is 6.10%.

You also pay each year

In addition to the up front sales fee, you will pay ongoing fees every year you hold shares in the fund. These fees are based on the value of your investment, and include:

Distribution fees *(we receive all or almost all of the distribution fees)*	0.25%
Management fees	0.75%
Other expenses	0.92%
Total annual fee %	**1.92%**

This estimate assumes the value of your investment stays the same. Your actual annual fees will depend on the value of your investment at the time the fee is calculated.

Investment value	**Estimated 1st year annual fees you will pay**	**Annual fee %**
$11,777.50	**$226.13**	**1.92%**

Conflicts of interest

Does the fund or its affiliates pay us extra to promote this fund over other funds?	**YES**
Do we pay our personnel more for selling this fund than for selling other funds we offer?	**NO**

You can request a summary of the special incentives we receive to sell this fund by calling (800) 888-8888 or review it on-line at www.brokerwebsite.com/specialincentives.

Attachment 8
Mutual Fund Class A – Confirmation

Confirmation of your transaction
AAA Equity Fund – Class B shares

Name:	**David Smith**
Account no:	**2345-9911**
Order date:	**October 28, 2004**
Settlement date:	**October 28, 2004**

Details of your transaction

Your total payment to purchase this fund:	**$12,500.00**
Amount invested per share (Net Asset Value):	$23.11
Number of shares bought:	540.8914

Fees

You will pay when you sell

You pay a sales fee for your Class B shares when you sell them—at the back end. This fee varies with both the value of the shares you sell and the length of time you hold them.

These estimates assume no change in the value of your investment. Your actual fee will depend on the value of the shares that you sell.

Your investment	If you hold these shares	Back-end sales fee you pay	Back-end fee%
$12,500.00	less than 1 year	**$762.50**	**6.10%**
	from 1 to 2 years	**$588.75**	**4.71%**
	from 2 to 3 years	**$453.75**	**3.63%**
	from 3 to 4 years	**$331.25**	**2.65%**
	from 4 to 5 years	**$218.75**	**1.75%**
	from 5 to 6 years	**$93.75**	**0.75%**
	more than 6 years	**$0.00**	**0.00%**

You also pay each year

In addition to the back end sales fee, you will pay ongoing fees every year you hold shares in the fund. These fees are based on the value of your investment, and include:

Distribution fees	1.00%
(we receive all or almost all of the distribution fees)	
Management fees	0.75%
Other expenses	0.92%
Total annual fee %	**2.67%**

This estimate assumes the value of your investment stays the same. Your actual annual fees will depend on the value of your investment at the time the fee is calculated.

Investment value	Estimated 1st year annual fees you will pay	Annual fee %
$12,500.00	**$333.75**	**2.67%**

Conflicts of interest

Does the fund or its affiliates pay us extra to promote this fund over other funds?	**YES**
Do we pay our personnel more for selling this fund than for selling other funds we offer?	**NO**
Do we pay our personnel more for selling class B shares than for selling other share classes of this same fund?	**NO**

You can request a summary of the special incentives we receive to sell this fund by calling (800) 888-8888 or review it on-line at www.brokerwebsite.com/specialincentives.

Attachment 9
Mutual Fund Class B – Confirmation

Confirmation of your transaction
AAA Equity Fund – Class C shares

Name:	**David Smith**
Account no:	**2345-9911**
Order date:	**October 28, 2004**
Settlement date:	**October 28, 2004**

Details of your transaction

Your total payment to purchase the fund:	**$12,500.00**
Amount invested per share (Net Asset Value):	$23.11
Number of shares bought:	540.8914

Fees

You will pay each year

For Class C shares, you will pay ongoing fees every year you hold shares in the fund. These fees are based on the value of your investment, and include:

Distribution fees	1.00%
(we receive all or almost all of the distribution fees)	
Management fees	0.75%
Other expenses	0.92%
Total annual fee %	**2.67%**

This estimate assumes the value of your investment stays the same. Your actual annual fees will depend on the value of your investment at the time the fee is calculated.

Investment value	**Estimated 1st year annual fees you will pay**	**Annual fee %**
$12,500.00	**$333.75**	**2.67%**

Conflicts of interest

Does the fund or its affiliates pay us extra to promote this fund over other funds?	**YES**
Do we pay our personnel more for selling this fund than for selling other funds we offer?	**NO**
Do we pay our personnel more for selling class C shares than for selling other share classes of this same fund?	**NO**

You can request a summary of the special incentives we receive to sell this fund by calling (800) 888-8888 or review it on-line at www.brokerwebsite.com/specialincentives.

Attachment 10
Mutual Fund Class C -- Confirmation

Confirmation of your transaction
[STATE] 529 Savings Plan Growth Portfolio – Class A

Name:	**David Smith**
Account no:	**2345-9911**
Order date:	**October 28, 2004**
Settlement date:	**October 28, 2004**

Details of your transaction

Your total payment to purchase this college savings plan:	$12,500.00
Up front sales fee you paid:	$722.50
Application fee you paid:	$75.00
Amount you invested in the fund:	**$11,702.50**
Amount invested per share (Net Asset Value):	$23.11
Number of shares bought:	506.3825

Fees

You paid when you bought

You paid a sales fee for your Class A shares up front when you purchased shares of this 529 college savings plan. This fee pay was based on your total payment amount.

Your total payment	Up front sales fee you paid	Your investment amount	Up front fee as % of your investment amount
$12,500.00	**$722.50**	**$11,777.50**	**6.13%**

The up front fee % you paid differs from the up front fee % in this college savings plan's offering document due to rounding. The up front fee % stated in the offering document is 6.10%.

You also paid an application fee: $75.00 ([State] residents)

You also pay each year

In addition to the up front sales fee, you will pay ongoing fees every year you hold this portfolio. These fees are based on the value of your investment, and include:

Distribution fees *(we receive all or almost all of the distribution fees)*	0.25%
Management fees	0.75%
Other expenses	1.18%
State administrative fees	0.20%
Total annual fee %	**2.38%**

This estimate assumes the value of your investment stays the same. Your actual annual fees will depend on the value of your investment at the time the fee is calculated.

Investment value	**Estimated 1st year annual fees you will pay**	**Annual fee %**
$11,777.50	**$280.30**	**2.38%**

Conflicts of interest

Are we paid extra to promote this college savings plan over others?	**YES**
Do we pay our personnel more for selling this college savings plan than for selling other plans we offer?	**NO**

You can request a summary of the special incentives we receive to sell this fund by calling (800) 888-8888 or review it on-line at www.brokerwebsite.com/specialincentives.

Attachment 11
529 Savings Plan Class A – Confirmation

Confirmation of your transaction
[STATE] 529 Savings Plan Growth Portfolio – Class B

Name:	**David Smith**
Account no:	**2345-9911**
Order date:	**October 28, 2004**
Settlement date:	**October 28, 2004**

Details of your transaction

Your total payment to purchase this college savings plan:	**$12,575.00**
Application fee you paid:	$75.00
Amount you invested in the fund:	**$12,500.00**
Amount invested per share (Net Asset Value):	$23.11
Number of shares bought:	540.8914

Fees

You will pay when you sell

You pay a sales fee for your Class B shares when you sell them—at the back end. This fee varies with both the value of the shares you sell and the length of time you hold them.

These estimates assume no change in the value of your investment. Your actual fee will depend on the value of your shares at the time you sell.

Your investment	If you hold these shares	Back-end sales fee you pay	Back-end fee%
$12,500.00	less than 1 year	**$762.50**	**6.10%**
	from 1 to 2 years	**$588.75**	**4.71%**
	from 2 to 3 years	**$453.75**	**3.63%**
	from 3 to 4 years	**$331.25**	**2.65%**
	from 4 to 5 years	**$218.75**	**1.75%**
	from 5 to 6 years	**$93.75**	**0.75%**
	more than 6 years	**$0.00**	**0.00%**

You also pay each year

In addition to the back end sales fee, you will pay ongoing fees every year you hold this portfolio. These fees are based on the value of your investment, and include:

Distribution fees	1.00%
(we receive all or almost all of the distribution fees)	
Management fees	0.75%
Other expenses	1.18%
State administrative fees	0.20%
Total annual fee %	**3.13%**

This estimate assumes the value of your investment stays the same. Your actual annual fees will depend on the value of your investment at the time the fee is calculated.

Investment value	Estimated 1st year annual fees you will pay	Annual fee %
$12,500.00	**$391.25**	**3.13%**

Conflicts of interest

Are we paid extra to promote this college savings plan over others?	**YES**
Do we pay our personnel more for selling this college savings plan than for selling other plans we offer?	**NO**
Do we pay our personnel more for selling Class B shares than for selling other share classes of the same 529 college savings plan?	**YES**

You can request a summary of the special incentives we receive to sell this fund by calling (800) 888-8888 or review it on-line at www.brokerwebsite.com/specialincentives.

Attachment 12
529 Savings Plan Class B – Confirmation

Confirmation of your transaction
[STATE] 529 Savings Plan Growth Portfolio – Class C

Name:	**David Smith**
Account no:	**2345-9911**
Order date:	**October 28, 2004**
Settlement date:	**October 28, 2004**

Details of your transaction

Your total payment to purchase this college savings plan:	**$12,575.00**
Application fee you paid:	$75.00
Amount you invested in the fund:	**$12,500.00**
Amount invested per share (Net Asset Value):	$23.11
Number of shares bought:	540.8914

Fees

You will pay each year

For Class C shares, you will pay ongoing fees every year you hold this portfolio. These fees are based on the value of your investment, and include:

Distribution fees	1.00%
(we receive all or almost all of the distribution fees)	
Management fees	0.75%
Other expenses	1.18%
State administrative fees	0.20%
Total annual fee %	**3.13%**

This estimate assumes the value of your investment stays the same. Your actual annual fees will depend on the value of your investment at the time the fee is calculated.

Investment value	**Estimated 1st year annual fees you will pay**	**Annual fee %**
$12,500.00	**$391.25**	**3.13%**

Conflicts of interest

Are we paid extra to promote this college savings plan over others?	**YES**
Do we pay our personnel more for selling this college savings plan than for selling other plans we offer?	**NO**
Do we pay our personnel more for selling Class C shares than for selling other share classes of the same 529 college savings plan?	**YES**

You can request a summary of the special incentives we receive to sell this fund by calling (800) 888-8888 or review it on-line at www.brokerwebsite.com/specialincentives.

Attachment 13
529 Savings Plan Class C – Confirmation

Confirmation of your transaction
AAA Variable Annuity

Name:	**David Smith**
Account no:	**2345-9911**
Order date:	**October 28, 2004**
Settlement date:	**October 28, 2004**

Details of your transaction

Your payment:	$12,000.00
Less up front sales fee you paid (6.35% of payment):	<762.50>
Equals investment amount before bonus	**$11,237.50**
Plus bonus credit	$500.00
Equals investment amount:	**$11,737.50**

This amount was allocated as follows:

Name of Fund	Accumulation Unit Value	Number of Units	Dollar Value
Equity Fund	$24.50	346.939	$8,500.00
Bond Fund	$42.85	46.383	$1,987.50
AAA Insurance Fixed Account			$1,250.00
		Total	**$11,737.50**

Fees

You paid when you bought

You paid a sales fee for your variable annuity up front when you purchased your contract.

Your payment	Up front sales fee you paid	Investment amount before bonus	Up front fee as % of investment amount before bonus
$12,000.00	**$762.50**	$11,237.50	**6.79%**

You also pay each year

You will pay ongoing fees every year you hold the contract. These fees will vary with the value of your contract, and may not be charged on assets held in the fixed account. Ask us for details.

Investment value		Estimated 1st year annual fees you will pay	Annual fee %
$11,737.50	Investment Option Fees	**$134.98**	**1.15%**
	Insurance Charges	**$234.75**	**2.00%**
	Annual Contract Charge	**$45.00**	
	Total	**$414.73**	

You will pay when you sell

You pay a surrender charge if you withdraw money from your contract within a certain period of time. The charge is based on the amount you withdraw, and when you make the withdrawal. If you received a bonus credit, part of it will also be taken away.

You may be able to make a partial surrender of your contract without incurring a surrender charge; see the prospectus for details.

This estimate assumes the value of your contract stays the same during the year. Your actual fees will vary based on the value of your contract at the time you surrender your contract.

Investment value	If you surrender within	Back-end sales fee including bonus repayment	Back-end fee%
$11,737.50	less than 1 years	**$1056.33**	**9.00%**
	from 1 to 2 years	**$939.00**	**8.00%**
	from 2 to 3 years	**$821.63**	**7.00%**
	from 3 to 4 years	**$704.25**	**6.00%**
	from 4 to 5 years	**$586.88**	**5.00%**
	from 5 to 6 years	**$469.50**	**4.00%**
	from 6 to 7 years	**$352.13**	**3.00%**
	from 7 to 8 years	**$234.75**	**2.00%**
	from 8 to 9 years	**$117.38**	**1.00%**
	more than 9 years	**$0.00**	**0.00%**

Conflicts of interest

Does the insurance company or its affiliates pay us extra to promote this product over other variable annuities?	**YES**
Do we pay our personnel more for selling this product than for selling other variable annuities we offer?	**NO**

You can request a summary of the special incentives we receive to sell this variable annuity by calling (800) 888-8888 or review it online at www.brokerwebsite.com/specialincentives.

Attachment 14
Variable Annuity – Confirmation

Our compensation for selling AAA Equity Fund

Compensation that all broker-dealers receive for selling this fund

We receive the following compensation in connection with selling this fund. These amounts may be funded by sales fees or other distribution charges. For most investors, those amounts will have been disclosed prior to purchase.

Class A shares ("front-end" sales fees)

Up-front compensation	Payment amount	What we receive	Our payment as %
We receive the following up-front compensation for selling Class A shares of this fund.	$1,000.00	$50.00	5.00%
	$50,000.00	$2,000.00	4.00%
	$100,000.00	$3,250.00	3.25%

Additional annual compensation	Investment value	What we receive	Our payment as %
Each year we also receive the following compensation based on the value of Class A shares owned by our customers.	$1,000.00	$2.50	0.25%
	$50,000.00	$125.00	0.25%
	$100,000.00	$250.00	0.25%

Class B shares ("back-end" sales fees)

Up-front compensation	Payment amount	What we receive	Our payment as %
We receive the following upfront compensation for selling Class B shares of this fund.	$1,000.00	$45.00	4.50%
	$50,000.00	$2,250.00	4.50%
	$100,000.00	$4,500.00	4.50%

Additional annual compensation	Investment value	What we receive	Our payment as %
Each year for the first seven years you own this fund, we also receive the following compensation based on the value of Class B shares owned by our customers. After seven years, this amount will reduce to 0.25%.	$1,000.00	$10.00	1.00%
	$50,000.00	$500.00	1.00%
	$100,000.00	$1,000.00	1.00%

Class C shares ("level sales fees")

Up-front compensation	Payment amount	What we receive	Our payment as %
We receive the following upfront compensation for selling Class C shares of this fund.	$1,000.00	$10.00	1.00%
	$50,000.00	$500.00	1.00%
	$100,000.00	$1,000.00	1.00%

Additional annual compensation	Investment value	What we receive	Our payment as %
Each year we also receive the following compensation based on the value of Class C shares owned by our customers.	$1,000.00	$10.00	1.00%
	$50,000.00	$500.00	1.00%
	$100,000.00	$1,000.00	1.00%

Attachment 15
Internet Disclosure Form

Special revenue sharing and other promotional payments we receive from the AAA fund family

We or our affiliates also receive other payments from AAA fund family. These promotional payments, which create conflicts of interest, are described below.

Type of payment	What we receive
Sales-based payments	We receive $2 for every $1000 of AAA Equity Fund shares we sell after we sell $10 million of AAA Equity Fund in a calendar year.
Payments for fund shares held by our customers	We annually receive 50 cents for every $1000 of AAA fund family shares that our customers maintain in their accounts for more than one year.
Other payments	In addition to the promotional compensation discussed above, in our most recent fiscal year we received $50,000 from the AAA family, on $40 million of total sales of AAA fund family shares. We expect to receive at least $25,000 of these types of promotional compensation from the AAA fund family in the current fiscal year, and we received $7500 of this type of compensation in the most recent fiscal quarter.

Additional payments we receive from the AAA fund family

In addition to the compensation described above, we or our affiliates further receive some payments from the AAA fund family for "transfer agent" or recordkeeping services that we perform in connection with fund shares held by our customers. In the most recent fiscal year, we received $40,000 from the AAA family. We expect to receive at least $20,000 of this type of compensation in the current fiscal year, and we received $6000 of this type of compensation in the most recent fiscal quarter.

Compensation-related conditions to our sale of mutual funds

– We only sell mutual funds that charge sales fees. We do not sell no-load funds, which charge no sales fees.

– We only sell mutual funds from fund families that pay us asset-based distribution fees ("rule 12b1 fees") of at least 0.25% of assets. If a fund family does not pay us those fees for all funds (including funds that are closed to new investors), we do not sell that family's mutual funds.

– We only sell mutual funds that pay us sub-transfer agent fees of $12 per customer account.

– Funds that pay revenue sharing to us receive special access to our sales personnel.

Special incentives we pay to our personnel for selling this fund or particular share classes

Our personnel are paid more for selling AAA fund shares

[Illustrative disclosure - higher payout to representative]
We pay our personnel more for selling fund shares issued by AAA fund family than for selling shares issued by some other fund families. For example, a salesperson who typically receives 42% of the sales fees we earn on mutual fund sales receive 45% of the sales fees we receive for the sale of AAA fund shares. Also, when our personnel sell AAA fund shares, they do not have to pay $8 per-transaction "ticket charges" that we otherwise would take out of their compensation.

[Alternative illustration - sale of fund that provides above average compensation]
Moreover, this fund's distributor pays all broker-dealers more for selling shares of this fund than the average we receive for selling comparable funds. Because we pay our personnel a standard percentage of our revenues, our personnel may earn more for selling this fund than they earn for selling comparable funds.

Our personnel may be paid more for selling class [B/C] shares

We can expect to earn more for selling class [B/C] shares of this fund than class A shares, particularly for larger sales, than we earn for selling other share classes. As a result, our personnel also may earn more when they sell class [B/C] shares.

Attachment 15
Internet Disclosure Form

[FR Doc. 05–4215 Filed 3–3–05; 8:45 am]
BILLING CODE 8010–01–C

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 418

RIN 0960–AG03

Medicare Part D Subsidies

AGENCY: Social Security Administration (SSA).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to add to our regulations a new part 418 to contain rules that we will apply when we evaluate applications for premium and cost-sharing subsidies under the Medicare program. We propose to include a new subpart D, Medicare Part D Subsidies, to this part. This new subpart would contain the rules that we use to determine eligibility for premium and cost-sharing subsidies under the Medicare Part D program, which was added by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Medicare Modernization Act). These proposed rules would describe: what the new subpart is about; how we determine whether you are eligible for premium and cost-sharing subsidies; how we redetermine your eligibility for a subsidy; how you apply for a subsidy; how we evaluate your income and resources; when your eligibility for premium and cost-sharing subsidies terminates; how you may report changes in your circumstances; and how you can appeal a determination we make under the Part D subsidy program.

DATES: To be sure your comments are considered, we must receive them by May 3, 2005.

ADDRESSES: You may give us your comments: by using our Internet site facility (*i.e.*, Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs* or the Federal eRulemaking Portal: *http://www.regulations.gov*; by e-mail to *regulations@ssa.gov*; by telefax to (410) 966–2830; or by letter to the Commissioner of Social Security, PO Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Disability and Income Security Programs, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site. You also may inspect the comments on regular business days by making arrangements with the contact person shown in the preamble.

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office at *http://www.gpoaccess.gov/fr/index.html.* It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs.*

FOR FURTHER INFORMATION CONTACT: Craig Streett, Team Leader, Office of Income Security Programs, Social Security Administration, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, 410–965–9793 or TTY 1–800–966–5906, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Statutory Provisions

Section 101 of the Medicare Modernization Act (Public Law 108–173), which was enacted into law December 8, 2003, adds sections 1860D–1 through 1860D–24 to the Social Security Act (the Act), and establishes a new Part D program for voluntary prescription drug coverage effective January 1, 2006. The Centers for Medicare & Medicaid Services (CMS) has overall responsibility for implementing the voluntary Medicare Part D prescription drug benefit and published final rules on January 28, 2005 at 70 FR 4193. As described in these proposed rules, we are responsible only for the premium and cost-sharing subsidy (the subsidy) portion of the Medicare Part D prescription drug benefit program. We are authorized to make eligibility determinations, provide appeal procedures, and perform eligibility redeterminations for the Part D subsidy in the 50 States and the District of Columbia. We will not undertake this task for Medicare beneficiaries who live in the territories or who live outside of the 50 States or the District of Columbia.

Section 702(a)(5) of the Act allows us to make the rules and regulations necessary or appropriate to carry out the functions of SSA. Section 1860D–14 of the Act provides for premium and cost-sharing subsidies of prescription drug coverage for certain individuals with low income and resources. An individual must be entitled to benefits under Medicare Part A or enrolled in Medicare Part B in order to receive a subsidy. Section 1860D–14(a)(3)(B) directs us to make subsidy determinations. It also requires us to provide appeal procedures for subsidy eligibility determinations and to perform redeterminations. (State Medicaid agencies have similar responsibilities that are covered in CMS' final rules.) The agency that processes the subsidy application will handle redeterminations and appeals arising from that application.

Background

The purpose of the subsidy program is to assist some Medicare beneficiaries, who have limited financial means, to pay for voluntary Medicare prescription drug coverage under the Medicare Part D program. If you have low income and limited resources, you may be eligible for a subsidy to help you pay your monthly premium, your copayments, and the annual deductible under your Medicare Part D prescription drug plan. If you are a Medicare beneficiary or are applying for Medicare benefits and you want to receive a subsidy, you must follow a two-step process to obtain prescription drug benefits:

- File a subsidy application either with SSA or with your State Medicaid Agency to see if you qualify for a subsidy; and
- Enroll with an authorized prescription drug provider for the Medicare Part D prescription drug benefit; *i.e.*, the prescription drug plan, while your subsidy application is still in effect. (We do not enroll beneficiaries for Medicare Part D. If you are a Medicare beneficiary, you must take the necessary steps to enroll yourself with a participating approved prescription drug plan or Medicare Advantage plan that offers prescription drug coverage. You may obtain information about enrolling by calling CMS at 1–800–Medicare.) You may take these 2 steps in any order. However, if you receive Medicaid coverage, are enrolled in a Medicare Savings Program within your State, or receive Supplemental Security Income (SSI) and have Medicare, you will be deemed eligible for this help and need not file a subsidy application.

How to Become Eligible for a Subsidy

Section 1860D–14 of the Act requires us to take applications for subsidies from individuals applying for Medicare Part D prescription drug coverage. These proposed rules describe the requirements you must meet to become eligible for a subsidy and what conditions will prevent you from receiving a subsidy. Criteria for eligibility include:

- You must be entitled to benefits under Medicare Part A (Hospital

Insurance) and/or enrolled in Medicare Part B (Supplementary Medical Insurance) under title XVIII of the Act;

- You must be enrolled in a Medicare prescription drug plan or Medicare Advantage plan with prescription drug coverage (*i.e.*, Medicare Part D) by the end of your enrollment period;
- You must reside in the United States as defined in § 418.3010;
- You (and your spouse, if applicable) must meet the income and resource requirements of the subsidy program; and
- You must apply for the subsidy.

Conditions that could prevent you from receiving a subsidy include:

- You lose entitlement to or are not enrolled in Medicare Part A and you also lose eligibility for or are not enrolled in Medicare Part B, or
- You do not enroll with a Medicare prescription drug plan or Medicare Advantage plan with prescription drug coverage or you are no longer enrolled in a Medicare Part D plan.

These proposed rules also tell you that if we made the original determination of subsidy eligibility, we will periodically review your subsidy eligibility to make sure that you are still eligible for a subsidy and to determine whether you should receive a full or partial subsidy. The amount of subsidies for Part D premiums, deductibles, and co-payments will be based on the amount of your income and resources (and those of your spouse, if applicable) and your family size.

Section 1860D–14(a)(3)(B)(ii) specifies that initial subsidy determinations will remain in effect for a period to be determined by the Secretary of Health and Human Services but not to exceed 1 year. Section 1860D–14(a)(3)(B)(iv) provides that we shall conduct redeterminations periodically. We interpret these provisions together as envisioning prospective determinations that remain unchanged until we conduct the next redetermination of eligibility. To comply with the 1 year limitation in section 1860D–14(a)(3)(B)(ii), we will conduct the first redetermination within 12 months of our final determination of your eligibility.

However, we recognize that certain life events could have a significant impact on your income, resources or family size which in turn could impact your eligibility for a subsidy or the amount of your subsidy. Therefore, these rules propose an exception to the general assumption that a determination remains in effect until we conduct the next redetermination.

Under that exception, if you are a subsidy-eligible individual and your income, resources or family size changes because of marriage, divorce, annulment, separation (legal or physical), or the death of your spouse, you may ask us to redetermine your subsidy based on your new circumstances. When you report such a change, we will send you a redetermination form. If you want us to redetermine your subsidy, complete the form and return it to us. The redetermined subsidy, if any, will be effective with the month after the month you request to redetermine your subsidy. We may process other changes, such as the loss of a job, which you would report, in conjunction with your next redetermination.

Applying for a Subsidy

Applying for the subsidy under Medicare Part D is a two-step process. You must:

- Apply for the subsidy with us or your State Medicaid agency, and
- Enroll in Medicare Part D by enrolling in a Medicare prescription drug plan or Medicare Advantage plan with prescription drug coverage.

You may take either step first, but the subsidy will not begin until you are enrolled in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage. If you file your application for the subsidy before the month you are enrolled in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage, the earliest month you can be eligible for the subsidy is the month you are enrolled in such a plan.

These proposed rules apply when you file for a Medicare Part D subsidy with SSA. As a condition of eligibility for the subsidy, section 1860D–14(a)(3) of the Act requires that you, or your personal representative (as defined in 42 CFR 423.772), file an application with SSA or a State office that accepts Medicaid applications. The SSA application may be printed in paper form, completed by SSA employees on computer screens, or available on SSA's Internet Web site. When you file an application, we will give you a determination of your eligibility, with appeal rights, on your eligibility for the subsidy and if eligible for the subsidy, on whether you should receive a full or partial subsidy. Timely filing also assures that you can receive the subsidy for any months you are eligible. If you inquire orally or in writing about the subsidy and tell us you want to file a subsidy application or if you partially complete the subsidy application on SSA's Internet Web site, we will use, where the requirements set forth in § 418.3230 are met, the date of your inquiry or the date we receive from our Web site a partially completed Internet subsidy application as your filing date for the subsidy.

Your application for the subsidy remains in effect until we make a final determination on it. A determination does not become final until a decision has been made on any appeal you have filed under this subpart. If you are not enrolled in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage when you file your subsidy application, we will write and tell you about your eligibility for the subsidy and that you must be enrolled in such a plan in order to receive a subsidy. If you are not enrolled in a plan when we redetermine your eligibility, we will terminate your subsidy and you will have to file a new subsidy application.

How We Evaluate Your Income

Section 1860D–14(a)(1)–(3) of the Act establishes income limits for eligibility for the Medicare Part D subsidy. Therefore, we are proposing to require you to provide information about the income you receive. If you are married and living with your spouse, we will also require you to provide information about your spouse's income. These proposed rules explain what we consider income, what we exclude from income counting, and how we will compute the amount of an individual's countable income.

We will count both earned income and unearned income. Earned income consists of wages and net earnings from self-employment. Unearned income is any income that is not wages or net earnings from self-employment. Unearned income includes Social Security benefits, Veterans benefits, public and private pensions, annuities, and any support and maintenance provided to you.

We will not count all of the money you receive when we determine your eligibility for the subsidy. We will apply certain exclusions to income you receive when we determine countable income. As directed by the new legislation, these exclusions are modeled after the exclusions used in the SSI program. For example, we will exclude up to $20 per month ($240 per year) of your unearned income. We will exclude from unearned income up to $60 per calendar quarter of income that is irregular or infrequent; *e.g.*, cash received as a birthday gift and up to $30 per calendar quarter of earned income that is irregular or infrequent. We will also exclude interest earned on resources that we count.

We will exclude up to $65 per month ($780 per year) and one-half of the

remainder of your earned income (or your and your spouse's combined earned income). We also will exclude a portion of earned income if you are disabled and have expenses related to your impairment that you must pay in order for you to work. We call these expenses impairment-related work expenses. Similarly, we will exclude a portion of your earned income if you are blind and have expenses that must be paid in order for you to work. We will apply these exclusions based on these percentages in lieu of determining the actual work related expense in each case. The amount we exclude will be equal to the average percentage of gross earnings excluded for SSI recipients who have such expenses. Initially, the exclusion for impairment-related work expenses will be 16.3 percent of the gross earnings; the exclusion for blind work expenses will be 25 percent of the gross earnings. However, if you have expenses that exceed the average, we will give you the opportunity to present evidence of your actual expenses and adjust the amount of earned income excluded accordingly. We may adjust the percentages if the average percentage of gross earnings excluded for SSI recipients changes. If we make such a change we will publish a notice in the **Federal Register**.

How We Evaluate Your Resources

Section 1860D–14(a)(3)(D) of the Act establishes resource limits for eligibility for the Medicare Part D subsidy. Therefore, we are proposing to require you to provide information about your resources. If you are married and living with your spouse, we also will require you to provide information about your spouse's resources. These proposed rules explain what resources we will count and what resources we will not count; *i.e.*, exclude from counting. As directed by the new legislation, the resource exclusions are modeled after the resource exclusions in the SSI program.

We will count liquid resources, which are cash and other property that normally can be converted to cash within 20 workdays. Liquid resources can include stocks, bonds, mutual fund shares, insurance policies, and financial institution accounts, including checking and savings accounts or retirement accounts, such as individual retirement accounts and 401(k) accounts. We also will count the equity value of real property that you own except for the home that is your principal place of residence.

Verification

We will compare the information you provide on your application to information in our records and information we obtain from other Federal agencies. If necessary, we will contact you to reconcile any discrepancies between the information on your application and the information from the Federal agencies. We may ask you to submit documents, such as bank statements, to resolve discrepancies.

Changes in Your Subsidy

Section 1860D–14(a)(3)(B)(iv) of the Act requires us to periodically redetermine your continuing subsidy eligibility. During those redeterminations, we will reevaluate your income and resources to see if you continue to be eligible for a subsidy. If you are still eligible there may be an increase or decrease in the amount of your subsidy. These rules explain how we propose to make adjustments to or to terminate subsidies as a result of periodic redeterminations or redeterminations based on reports of death, marriage, divorce, annulment, and separation. Any determinations made as a result of changes in your circumstances will be a new initial determination, and we will notify you of the determination in writing and explain your right to appeal that determination.

If You Disagree With Our Determination of Your Subsidy

Section 1860D–14(a)(3)(B)(iv)(II) of the Act requires us to establish appeal procedures for subsidy eligibility determinations similar to the current appeal process for the SSI program. The procedures in these proposed rules will apply only if we, not a State Medicaid agency, make the initial determination. We are proposing a process for you to appeal our eligibility determination on your subsidy application, and our determinations of whether you can receive a full or partial subsidy, of an adjustment of a subsidy, or of a termination of your subsidy eligibility. We also explain the rights of your spouse whose eligibility could be adversely affected by your appeal. In these proposed rules, the term ''the appeal process,'' means the same as ''the administrative review process,'' and we use these terms interchangeably throughout.

The administrative review process we are proposing will provide you one level of administrative review. Under these proposed rules, if you decide you want to appeal, you may choose between either a hearing via telephone or a case review. Both the telephone hearing and the case review are at the same level of the appeals process. You will have an opportunity to review the information we use in making a decision and to give us more information that you may want us to consider. You can also have witnesses at your hearing, if you choose.

In addition, you can have a personal representative help you with your appeal or represent you. CMS regulations (42 CFR 423.772), which we will apply here, define a personal representative as:

- An individual who is authorized to act on behalf of the applicant;
- If the applicant is incapacitated or incompetent, someone acting responsibly on his or her behalf, or
- An individual of the applicant's choice who is requested by the applicant to act as his or her representative in the application process.

We will work with your representative just as we would work with you.

You must contact us within 60 days of the date you receive notice of the initial determination to ask for an appeal of your subsidy determination. If you miss the deadline for requesting appeal, you can request more time if you can show us you have good cause for missing the deadline. Once we make a decision on your appeal or dismiss your request for an appeal for the reason(s) cited in these proposed rules, we will send you a written notice explaining our decision. If you are dissatisfied with our initial decision, you may file an action in Federal district court.

The issues that we will review are the issues with which you disagree. We may consider other issues, but we will provide you with advance notice of these other issues as explained in § 418.3625.

Explanation of Proposed Part 418

Proposed part 418 would consist of four subparts. We propose to reserve subparts A–C for future use. We also propose to add a new subpart D, Medicare Part D Subsidies, which would contain the rules that we use to make determinations and decisions about eligibility for the subsidy. In the following sections of the regulatory text of these proposed rules, we cite cross-references to sections in CMS' final rules published on January 28, 2005 at 70 FR 4193: §§ 418.3001, 418.3010, 418.3101, 418.3105, 418.3120, 418.3215, 418.3220, 418.3225 and 418.3230.

Following is a description of each section for proposed subpart D.

Introduction, General Provisions, and Definitions

- Section 418.3001 describes what subpart D is about, lists the groups of sections, and the subject of each group.
- Section 418.3005 explains that the purpose of the subsidy program is to offer help with prescription drug costs to individuals with limited financial means who meet specific requirements.
- Section 418.3010 contains definitions of terms used throughout this subpart.

Eligibility for a Medicare Prescription Drug Subsidy

- Section 418.3101 lists the requirements that you must meet to establish eligibility for a subsidy.
- Section 418.3105 provides a cross-reference to CMS' regulations concerning who does not need to file an application for a subsidy.
- Section 418.3110 explains what happens when you apply for a subsidy.
- Section 418.3115 describes what will prevent you from becoming eligible for a subsidy, even if you meet the requirements in § 418.3101.
- Section 418.3120 describes the changes in your circumstances that may affect your eligibility for a subsidy or whether you can receive a full or partial subsidy, explains when we may make a redetermination of your eligibility when your circumstances change, and explains that we will notify you of our determination.
- Section 418.3123 explains when a change in your subsidy is effective.
- Section 418.3125 defines the term ''redetermination'' and explains when we conduct redeterminations.

Filing of Applications

- Section 418.3201 explains that an application is usually necessary for a subsidy and why.
- Section 418.3205 explains when an application for a subsidy becomes a claim for a subsidy.
- Section 418.3210 describes an application for a subsidy.
- Section 418.3215 explains who may file an application for a subsidy.
- Section 418.3220 explains when we consider an application for a subsidy filed and lists places it can be filed.
- Section 418.3225 explains how long an application for a subsidy will remain in effect.
- Section 418.3230 explains when we will use the date you make an oral or written inquiry indicating your intent to file for the subsidy as your subsidy application filing date.

Income

- Section 418.3301 provides the general definition of income that will be used for subsidy determinations.
- Section 418.3305 provides a general description of what is not considered income for purposes of determining eligibility for a subsidy and if eligible, whether you should receive a full or partial subsidy.
- Section 418.3310 explains whose income will be counted when we determine eligibility for a subsidy and if eligible, whether you should receive a full or partial subsidy.
- Section 418.3315 describes earned income.
- Section 418.3320 explains how we count earned income, including when it is considered received, how we count net earnings from self-employment, how we count royalties and honoraria, and how we determine the time periods for which the earned income is counted.
- Section 418.3325 explains that not all earned income will be counted and lists the earned income exclusions that may apply.
- Section 418.3330 provides the general definition of unearned income.
- Section 418.3335 describes the types of unearned income that will be counted.
- Section 418.3340 describes how we count unearned income, including when it is considered received, how we determine how much of your income is countable, and how we determine the time periods for which the unearned income is counted.
- Section 418.3345 explains how we will determine the value of unearned income, if any, received in the form of in-kind support and maintenance.
- Section 418.3350 explains that not all unearned income is countable and lists the exclusions that may apply.

Resources

- Section 418.3401 provides the general definition of resources that will be used for purposes of subsidy eligibility determinations.
- Section 418.3405 describes the types of resources that are considered for purposes of subsidy eligibility determinations and lists the type of resources that are considered liquid.
- Section 418.3410 explains whose resources will be counted.
- Section 418.3415 explains that we determine the value of countable resources as of the first day of the month for which a determination will be made.
- Section 418.3420 explains how we count funds held in financial institution accounts.
- Section 418.3425 provides a list of assets that will not be counted as resources.

Adjustments and Terminations

- Section 418.3501 explains the types of events that could cause us to increase or reduce your subsidy or to terminate your eligibility for a subsidy.
- Section 418.3505 describes the effects of increases, reductions, and terminations of subsidies.
- Section 418.3510 explains that before we increase, reduce, or terminate your subsidy, we must send you a written notice with appeal rights.
- Section 418.3515 explains that after we terminate a subsidy, you must generally file a new application to be eligible for a subsidy again.

Determinations and the Administrative Review Process

- Section 418.3601 explains your rights and your spouse's rights under the administrative review process.
- Section 418.3605 explains that initial determinations are determinations we make that are subject to administrative and judicial review and provides examples of determinations that are initial determinations.
- Section 418.3610 lists administrative actions that are not initial determinations. Although we may review these actions, they are not subject to administrative or judicial review.
- Section 418.3615 explains that we will mail you a notice whenever we make an initial determination in your case. The notice will tell you what our determination is, our reasons for making the determination, and your right to request an appeal of the determination.
- Section 418.3620 explains that an initial determination is binding unless you request an appeal within the stated time period.
- Section 418.3625 describes the administrative review process. This section also explains that if you are dissatisfied with our final decision, you may request judicial review.
- Section 418.3630 explains how to file a request for a hearing and that you may ask for more time to request your appeal if you had good cause for missing the 60-day deadline.
- Section 418.3635 explains who can request administrative review on your behalf.
- Section 418.3640 explains the standards we follow in determining whether you had good cause for missing the 60-day deadline to request a review.
- Section 418.3645 explains under what circumstances the decision-maker may be disqualified.

• Section 418.3650 explains that we make a decision based on the information we have and any other information you provide.

• Section 418.3655 explains that we will send you a notice of our decision on the appeal that gives you the right to judicial review.

• Section 418.3665 explains under what circumstances your request for administrative review may be dismissed.

• Section 418.3670 explains how we will notify you if your request for administrative review is dismissed.

• Section 418.3675 explains that our final decision on appeal is binding unless you request judicial review within the stated time.

• Section 418.3680 explains what happens if a Federal court remands your case to the Commissioner.

Clarity of These Proposed Rules

Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to comments you may have on these proposed rules, we also invite your comments on how to make the rules easier to understand. For example:

• Have we organized the material to suit your needs?

• Are the requirements in the rules clearly stated?

• Do the rules contain technical language or jargon that is not clear?

• Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?

• Would more (but shorter) sections be better?

• Could we improve clarity by adding tables, lists, or diagrams?

• What else could we do to make the rules easier to understand?

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were reviewed by OMB. Any effect on the economy is attributable to the legislation, not to these proposed rules. For an analysis of the economic impact of the entire Medicare Part D program, see CMS' final rules published in the **Federal Register** on January 28, 2005 at 70 FR 4193.

Regulatory Flexibility Act

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities as they affect individuals only. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required for these proposed rules. However, for an analysis of the economic impact of the entire Medicare Part D program, see CMS' final rules published in the **Federal Register** on January 28, 2005 at 70 FR 4193.

Federalism Impact and Unfunded Mandates Impact

We have reviewed these proposed rules under the threshold criteria of Executive Order 13132 and the Unfunded Mandates Reform Act and have determined that they do not have substantial direct effects on the States, on the relationship between the national government and the States, on the distribution of power and responsibilities among the various levels of government, or on imposing any costs on State, local, or tribal governments. These proposed rules do not affect the roles of the State, local, or tribal governments but rather, offer an option as intended by the legislation, *i.e.*, whether to apply for a subsidy to SSA or to the States. For an analysis of the Federalism and Unfunded Mandates impact of the entire Medicare Part D program, see CMS' final rules published in the **Federal Register** on January 28, 2005 at 70 FR 4193.

Paperwork Reduction Act

These proposed rules contain reporting requirements as shown in the following table. Where the public reporting burden is accounted for in Information Collection Requests for the various forms that the public uses to submit the information to SSA, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules.

Section	Annual number of responses	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
§ 418.3120				1
§§ 418.3201, 418.3210, 418.3215, 418.3220 & 418.3225				1
§ 418.3515				1
§ 418.3625(b)				1
§ 418.3625(c)	5,625	1	5	469
§ 418.3635				1
§ 418.3645	37	1	20	12
§ 418.3665(a)	375	1	5	31
§ 418.3670	19	1	10	3
Total				520

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted and/or faxed to OMB and SSA at the following addresses/numbers:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974.

Social Security Administration, Attn: SSA Reports Clearance Officer, Rm. 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, Fax Number: 410–965–6400.

Comments can be received for up to 60 days after publication of this notice and will be most useful if received within 30 days of publication. To receive a copy of the OMB clearance package, you may call the SSA Reports Clearance Officer at 410–965–0454.

(Catalog of Federal Domestic Assistance Program Nos. 93.773, Medicare—Hospital Insurance and 93.774, Medicare—Supplementary Medical Insurance Program)

List of Subjects in 20 CFR Part 418

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Medicare subsidies.

Dated: November 23, 2004.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to add a new part 418 to chapter III of title 20 of the Code of Federal Regulations as follows:

PART 418—MEDICARE SUBSIDIES

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Subparts A–C—[Reserved]

Subpart D—Medicare Part D Subsidies

Authority: Secs. 702(a)(5) and 1860D–1, 1860D–14 and –15 of the Social Security Act (42 U.S.C. 902(a)(5), 1395w–101, 1395w–114, and –115).

Introduction, General Provisions, and Definitions

§ 418.3001 What is this subpart about?

This subpart D (Regulations No. 18 of the Social Security Administration (SSA)) relates to sections 1860D–1 through 1860D–24 of title XVIII of the Social Security Act (the Act) as added by section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173). Sections 1860D–1 through 1860D–24 established Part D of title XVIII of the Social Security Act to create a Medicare program known as the Voluntary Prescription Drug Benefit Program. Section 1860D–14, codified into the Act by section 101, includes a provision for subsidies of prescription drug premiums and of Part D cost-sharing requirements for Medicare beneficiaries whose income and resources do not exceed certain levels. The regulations in this subpart explain how we decide whether you are eligible for a Part D premium subsidy as defined in 42 CFR 423.780 and cost-sharing subsidy as defined in 42 CFR 423.782. The rules are divided into the following groups of sections according to subject content.

(a) Sections 418.3001 through 418.3010 contain the introduction, a statement of the general purpose underlying the subsidy program for the Voluntary Prescription Drug Benefit Program under Medicare Part D, general provisions that apply to the subsidy program, a description of how we administer the program, and definitions of terms that we use in this subpart.

(b) Sections 418.3101 through 418.3125 contain the general requirements that you must meet in order to be eligible for a subsidy. These sections set forth the subsidy eligibility requirements of being entitled to Medicare, of having income and resources below certain levels, and of filing an application. These sections also explain when we will redetermine your eligibility for a subsidy and the period covered by a redetermination.

(c) Sections 418.3201 through 418.3230 contain the rules that relate to the filing of subsidy applications.

(d) Sections 418.3301 through 418.3350 contain the rules that explain how we consider your income (and your spouse's income, if applicable) and define what income we count when we decide whether you are eligible for a subsidy.

(e) Sections 418.3401 through 418.3425 contain the rules that explain how we consider your resources (and your spouse's resources, if applicable) and define what resources we count

when we decide whether you are eligible for a subsidy.

(f) Sections 418.3501 through 418.3515 contain the rules that explain when we will adjust or when we will terminate your eligibility for a subsidy.

(g) Sections 418.3601 through 418.3670 contain the rules that we apply when you appeal our determination regarding your subsidy eligibility or our determination of whether you should receive a full or partial subsidy.

§ 418.3005 Purpose and administration of the program.

The purpose of the subsidy program is to offer help with the costs of prescription drug coverage for individuals who meet certain income and resources requirements under the law as explained in this subpart. The Centers for Medicare & Medicaid Services (CMS) in the Department of Health and Human Services has responsibility for administration of the Medicare program, including the new Medicare Part D Voluntary Prescription Drug Benefit Program. We provide information through notices to beneficiaries about the Voluntary Prescription Drug Benefit Program under Medicare Part D, notify Medicare beneficiaries who appear to have limited income, based on our records, about the availability of the subsidy if they are not already eligible for this help, and take applications for and determine the eligibility of individuals for a subsidy.

§ 418.3010 Definitions.

(a) *Terms relating to the Act and regulations.* (1) *We, our* or *us* means the Social Security Administration (SSA).

(2) *The Act* means the Social Security Act, as amended.

(3) *Title* means a title of the Act.

(4) *Section* means a section of the regulations in part 418 of this chapter unless the context indicates otherwise.

(5) *CMS* means the Centers for Medicare & Medicaid Services in the Department of Health and Human Services.

(6) *Commissioner* means the Commissioner of Social Security.

(b) *Miscellaneous.* (1) Claimant means the person on whose behalf an application is filed.

(2) *Date you receive a notice* means five calendar days after the date on the notice, unless you show us you did not receive it within the five-day period.

(3) *Determination* means the initial determination that we make as defined in § 418.3605.

(4) *Decision* means the decision we make after a hearing.

(5) *Family size*, for purposes of this subpart, means family size as defined in 42 CFR 423.772.

(6) *Federal poverty line*, for purposes of this subpart, has the same meaning as Federal poverty line in 42 CFR 423.772.

(7) *Full-benefit dual eligible individual*, for purposes of this subpart, has the same meaning as full benefit dual eligible individual in 42 CFR 423.772.

(8) *Medicare beneficiary* means an individual who is entitled to or enrolled in Medicare Part A benefits (Hospital Insurance) or enrolled in Part B (Supplementary Medical Insurance) or both.

(9) *Periods of limitations ending on Federal nonworkdays.* Title XVIII of the Act and regulations in this subpart require you to take certain actions within specified time periods or you may lose your right to a portion of or your entire subsidy. If any such period ends on a Saturday, Sunday, Federal legal holiday, or any other day all or part of which is declared to be a nonworkday for Federal employees by statute or Executive Order, you will have until the next Federal workday to take the prescribed action.

(10) *Representative* or *personal representative* means personal representative as defined in 42 CFR 423.772

(11) *Subsidy* means an amount CMS will pay on behalf of Medicare beneficiaries who are eligible for a subsidy of their Medicare Part AD costs. The amount of a subsidy for a Medicare beneficiary depends on the beneficiary's income, resources, and late enrollment penalties (if any) as explained in 42 CFR 423.780 and 42 CFR 423.782. We do not determine the amount of the subsidy, only whether or not the individual is eligible for a full or partial subsidy.

(12) *Subsidy eligible individual*, for purposes of this subpart, has the same meaning as subsidy eligible individual as defined in 42 CFR 423.773.

(13) *State*, unless otherwise indicated, means:

(i) A State of the United States; or

(ii) The District of Columbia.

(14) *United States* when used in a geographical sense means:

(i) The 50 States; and

(ii) The District of Columbia.

(15) *You* or *your* means the person for whom an application is filed.

Eligibility for a Medicare Prescription Drug Subsidy

§ 418.3101 How do you become eligible for a subsidy?

Unless you are deemed eligible as explained in § 418.3105 and 42 CFR 423.773(c), you are eligible for a Medicare Part D prescription drug subsidy if you meet all of the following requirements:

(a) You are entitled to benefits under Medicare Part A (Hospital Insurance) and/or enrolled in Medicare Part B (Supplementary Medical Insurance) under title XVIII of the Act.

(b) You are enrolled in a Medicare prescription drug plan or Medicare Advantage plan with prescription drug coverage. We can also determine your eligibility for a subsidy before you enroll in one of the above programs. However, as explained in § 418.3225(b), if we determine that you would be eligible for a subsidy before you have enrolled in a Medicare prescription drug plan or Medicare Advantage plan with prescription drug coverage, you must enroll in one of these plans to actually receive a subsidy.

(c) You reside in the United States as defined in § 418.3010.

(d) You (and your spouse, if applicable) meet the income requirements as explained in §§ 418.3301 through 418.3350 and 42 CFR 423.773.

(e) You (and your spouse, if applicable) meet the resources requirements as explained in §§ 418.3401 through 418.3425 and 42 CFR 423.773.

(f) You or your personal representative file an application for a subsidy as explained in §§ 418.3201 through 418.3230.

§ 418.3105 Who does not need to file an application for a subsidy?

Regulations in 42 CFR 423.773(c) explain who is deemed eligible and does not need to file an application for a subsidy to be eligible for this assistance.

§ 418.3110 What happens when you apply for a subsidy?

(a) When you or your personal representative apply for a subsidy, we will ask for information that we need to determine if you meet all the requirements for a subsidy. You must give us complete information. If, based on the information you present to us, you do not meet all the requirements for eligibility listed in § 418.3101, or if one of the events listed in § 418.3115 exists, or you fail to submit information we request, we will deny your claim.

(b) If you meet all the requirements for eligibility listed in § 418.3101, or you meet all the requirements except for enrollment in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage, we will send you a notice telling you the following:

(1) You are eligible for a full or partial subsidy for a period not to exceed 1 year;

(2) What information we used to make this determination including how we calculated your income and resources;

(3) How to ask us to redetermine your subsidy eligibility;

(4) What you may do if your circumstances change; and

(5) Your appeal rights.

(c) If you are not already enrolled with a Medicare prescription drug plan or a Medicare Advantage plan with prescription drug coverage, you must enroll in order to receive your subsidy. If you are not enrolled in a plan when we redetermine your eligibility per § 418.3125, we will terminate your subsidy and you will need to file a new application as stated in § 418.3225.

(d) If you do not meet all the requirements for eligibility listed in § 418.3101 or if § 418.3115 applies to you except for enrollment in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage as described in § 418.3225, we will send you a notice telling you the following:

(1) You are not eligible for a subsidy;

(2) The information we used to make this determination including how we calculated your income or resources;

(3) You may reapply if your situation changes; and

(4) Your appeal rights.

§ 418.3115 What events will prevent you from becoming eligible for a subsidy?

Generally, even if you meet the other requirements in §§ 418.3101 through 418.3125, we will deny your claim or you will lose your eligibility for a subsidy if any of the following apply to you:

(a) You lose entitlement to or are not enrolled in Medicare Part A or are not enrolled in Medicare Part B.

(b) You do not enroll or lose your enrollment in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage.

(c) You do not give us information we need to determine your eligibility and if eligible, whether you should receive a full or partial subsidy; or you do not give us information we need to determine whether you continue to be eligible for a subsidy and if eligible, whether you should receive a full or partial subsidy.

(d) You knowingly give us false or misleading information.

§ 418.3120 What happens if your circumstances change after we determine you are eligible for a subsidy?

(a) After we determine that you are eligible for a subsidy, your subsidy eligibility could change if:

(1) You marry.

(2) You and your spouse, who lived with you, divorce.

(3) Your spouse, who lives with you, dies.

(4) You and your spouse separate (*i.e.*, you or your spouse move out of the household and you are no longer living with your spouse) unless the separation is a temporary absence as described in § 404.347 of this chapter.

(5) You and your spouse, who lives with you, have your marriage annulled.

(6) You (or your spouse, who lives with you, if applicable) expect your estimated annual income (excluding cost-of-living adjustments in income from SSA, from the Railroad Retirement Board, the Department of Veterans Affairs, and/or from the Office of Personnel Management) to increase or decrease in the next calendar year.

(7) You (or your spouse, who lives with you, if applicable) expect your resources to increase or decrease in the next calendar year.

(8) Your family size as defined in 42 CFR 423.772 has changed or will change (other than a change resulting from one of the events in paragraphs (a)(1) through (5) of this section).

(9) You become eligible for one of the programs listed in 42 CFR 423.773(c).

(b)(1) When you report one of the events listed in paragraphs (a)(1) through (a)(5) of this section, or we receive such a report from another source (*e.g.*, a data exchange of reports of death), we will send you a redetermination form upon receipt of the report. You must return the completed form within 90 days of the date of the form.

(2) When you report one of the events listed in paragraphs (a)(6) through (a)(8) of this section or we receive such a report from another source (*e.g.*, a data exchange involving income records), we will send you a redetermination form between August and December to evaluate the change. You must return the completed form to us within 30 days of the date of the form.

(3) If we increase, decrease, or terminate your subsidy as a result of the redetermination, we will send you a notice telling you:

(i) Whether you can receive a full or partial subsidy as described in 42 CFR 423.780 and 423.782.

(ii) How we calculated your income and resources;

(iii) When the change in your subsidy is effective;

(iv) Your appeal rights;

(v) What to do if your situation changes.

(c) If you become eligible for one of the programs listed in 42 CFR 423.773(c), CMS will notify you of any change in your subsidy.

§ 418.3123 When is a change in your subsidy effective?

(a) If we redetermine your subsidy as described in § 418.3120(b)(1), any change in your subsidy will be effective the month following the month of your report.

(b) If we redetermine your subsidy as described in § 418.3120(b)(2), any change in your subsidy will be effective in January of the next year.

(c) If you do not return the redetermination form described in § 418.3120(b)(1), we will terminate your subsidy effective with the month following the expiration of the 90-day period described in § 418.3120(b)(1).

(d) If you do not return the redetermination forms described in § 418.3120(b)(2), we will terminate your subsidy effective in January of the next year.

§ 418.3125 What are redeterminations?

(a) *Redeterminations defined.* A redetermination is a periodic review of your eligibility to make sure that you are still eligible for a subsidy and if so, to determine whether you should continue to receive a full or partial subsidy. This review deals with evaluating your income and resources (and those of your spouse, who lives with you) and will not affect past months of eligibility. It will be used to determine your future subsidy eligibility and whether you should receive a full or partial subsidy for future months. We will redetermine your eligibility if we made the initial determination of your eligibility or if you are deemed eligible because you receive SSI benefits. Rules regarding redeterminations of initial eligibility determinations made by a State are described in 42 CFR 423.774.

(b) *When we make redeterminations.* (1) We will redetermine your subsidy eligibility within one year of our final determination of your eligibility for the subsidy.

(2) After the first redetermination, we will redetermine your subsidy eligibility at intervals determined by the Commissioner. The length of time between redeterminations varies depending on the likelihood that your situation may change in a way that affects your eligibility and whether you should receive a full or partial subsidy.

(3) We may also redetermine your eligibility and whether you should receive a full or partial subsidy when you tell us of a change in your circumstances described in § 418.3120.

(4) We may redetermine your eligibility when we receive information

from you or from data exchanges with Federal and State agencies that may affect whether you should receive a full or partial subsidy or your eligibility for the subsidy.

(5) We will also redetermine eligibility on a random sample of cases for quality assurance purposes. For each collection of sample cases, all factors affecting eligibility and/or whether you should receive a full or partial subsidy may be verified by contact with primary repositories of information relevant to each individual factor (*e.g.*, we may contact employers to verify wage information). Consequently, we may contact a variety of other sources, in addition to recontacting you, to verify the completeness and accuracy of our information.

Filing of Application

§ 418.3201 Must you file an application to become eligible for a subsidy?

Unless you are a person covered by § 418.3105, in addition to meeting other requirements, you or your personal representative must file an application to become eligible for a subsidy. If you believe you may be eligible for a subsidy, you should file an application. Filing a subsidy application does not commit you to participate in the Part D program.

Filing an application will:

(a) Permit us to make a formal determination on your eligibility for the subsidy and whether you should receive a full or partial subsidy;

(b) Assure that you can receive the subsidy for any months that you are eligible and are enrolled in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage; and

(c) Give you the right to appeal if you disagree with our determination.

§ 418.3205 What makes an application a claim for a subsidy?

We will consider your application a claim for the subsidy if:

(a) You, or someone acting on your behalf as described in § 418.3215, complete an application on a form prescribed by us;

(b) You, or someone acting on your behalf as described in § 418.3215, file the application with us pursuant to § 418.3220; and

(c) You are alive at the time it is filed.

§ 418.3210 What is a prescribed application for a subsidy?

If you choose to apply with SSA, you must file for the subsidy on an application prescribed by us. A prescribed application may include a printed form, an application our employees complete on computer screens, or an application available online at www.socialsecurity.gov on the SSA Internet Web site. See § 418.3220 for places where an application for the subsidy may be filed and when it is considered filed.

§ 418.3215 Who may file your application for a subsidy?

You or your personal representative (as defined in 42 CFR 423.772) may complete, and file your subsidy application.

§ 418.3220 When is your application considered filed?

(a) *General rule.* We consider an application for a subsidy as described in § 418.3210 to be filed with us on the day it is received by either an SSA employee at one of our offices or an SSA employee who is authorized to receive it at a place other than one of our offices or it is considered filed on the day it is submitted electronically through SSA's Internet Web site. If a State Medicaid agency forwards to us a subsidy application that you gave to it, we will consider the date you submitted that application to the State Medicaid agency as the filing date. (See 42 CFR 423.774 for applications filed with a State Medicaid agency.)

(b) *Exceptions.* (1) When we receive an application that is mailed, we will assume that we received it 5 days earlier and use the earlier date as the application filing date if it would result in another month of subsidy eligibility.

(2) We may consider an application to be filed on the date a written or oral inquiry about your subsidy eligibility is made, or the date we receive a partially completed Internet subsidy application from SSA's Web site where the requirements set forth in § 418.3230 are met.

§ 418.3225 How long will your application remain in effect?

(a) Your application will remain in effect until we make a final determination on it. A determination does not become final until a decision on any appeal you have filed under this subpart is issued.

(b) If, at the time your application is filed or before we make a final determination, you meet all the requirements for a subsidy as described in 42 CFR 423.773 except for enrollment in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage, we will send you a notice advising you of your eligibility for the subsidy and the requirement to enroll in such a plan. If you are not enrolled when we redetermine your eligibility as described in § 418.3125, we will terminate your subsidy and you will need to file a new subsidy application.

(c) If you are not entitled to Medicare Part A and/or enrolled in Medicare Part B at the time your subsidy application is filed and it appears that you may be eligible for the subsidy, we will send you a notice advising you that you are eligible for the subsidy provided that you become entitled to Medicare Part A and/or enrolled in Medicare Part B and enroll in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage. If you are not entitled to Medicare Part A and/or enrolled in Medicare Part B and enrolled in a Medicare Part D plan or Medicare Advantage plan with prescription drug coverage when we redetermine your eligibility as described in § 418.3125, we will terminate your subsidy and you will need to file a new subsidy application and become entitled to Medicare Part A and/or enroll in Medicare Part B during a subsequent enrollment period.

§ 418.3230 When will we use your subsidy inquiry as your filing date?

If you or your personal representative (as defined in 42 CFR 423.772) make an oral or written inquiry about the subsidy, or partially complete an Internet subsidy application on SSA's Web site, we will use the date of the inquiry or the date the partial Internet application was started as your filing date if the following requirements are met:

(a) The written or oral inquiry indicates your intent to file for the subsidy, or you submit a partially completed Internet application to us;

(b) The inquiry, whether in person, by telephone, or in writing, is directed to an office or an official described in § 418.3220, or a partially completed Internet subsidy application is received by us;

(c) An application as defined in § 418.3210 is filed by you or by your personal representative (as defined in 42 CFR 423.772) within 60 days after the date of the advance notice we will send. The notice will say that we will make an initial determination of your qualifications, if an application is filed within 60 days after the date of the notice. We will send the notice to you. Where you are a minor or adjudged legally incompetent and your personal representative made the inquiry, we will send the notice to your personal representative; and

(d) The claimant is alive when the application is filed.

Income

§ 418.3301 What is income?

Income is anything you and your spouse, who lives with you, receive in cash or in-kind that you can use to meet your needs for food and shelter. Income can be earned income or unearned income.

§ 418.3305 What is not income?

Some things you receive are not considered income because you cannot use them to meet your needs for food or shelter. The things that are not income for purposes of determining eligibility and whether you should receive a full or partial subsidy are described in § 416.1103 of this chapter.

§ 418.3310 Whose income do we count?

(a) We count your income. If you are married and live with your spouse in the month you file for a subsidy, or when we redetermine your eligibility for a subsidy as described in § 418.3125, we count your income and your spouse's income regardless of whether one or both of you apply or are eligible for the subsidy.

(b) We will determine your eligibility based on your income alone if you are not married or if you are married but you are separated from your spouse (*i.e.*, you or your spouse move out of the household and you are no longer living with your spouse) at the time you apply for a subsidy or when we redetermine your eligibility for a subsidy as described in § 418.3125.

(c) If your subsidy is based on your income and your spouse's income and we redetermine your subsidy as described in § 418.3120(b)(1), we will stop counting the income of your spouse in the month following the month that we receive a report that your marriage ended due to death, divorce, or annulment; or a report that you and your spouse stopped living together.

(d) If your subsidy is based on your income and your spouse's income, we will continue counting the income of both you and your spouse if one of you is temporarily away from home as described in § 404.347 of this chapter.

§ 418.3315 What is earned income?

Earned income is defined in § 416.1110 of this chapter and may be in cash or in kind. We may count more of your earned income than you actually receive. We count gross income, which is more than you actually receive, if amounts are withheld from earned income because of a garnishment, or to pay a debt or other legal obligation such as taxes, or to make any other similar payments.

§ 418.3320 How do we count your earned income?

(a) *Wages.* We count your wages at the earliest of the following points: when you receive them, when they are credited to you, or when they are set aside for your use.

(b) *Net earnings from self-employment.* We count net earnings from self-employment on a taxable year basis. If you have net losses from self-employment, we deduct them from your other earned income. We do not deduct the net losses from your unearned income.

(c) *Payments for services performed in a sheltered workshop or work activities center.* We count payments you receive for services performed in a sheltered workshop or work activities center when you receive them or when they are set aside for your use.

(d) *In-kind earned income.* We count the current market value of in-kind earned income. For purposes of this part, we use the definition of current market value in § 416.1101 of this chapter. If you receive an item that is not fully paid for and you are responsible for the unpaid balance, only the paid up value is income to you (see example in § 416.1123(c) of this chapter).

(e) *Certain honoraria and royalties.* We count honoraria for services rendered and royalty payments that you receive in connection with any publication of your work. We will consider these payments as available to you when you receive them, when they are credited to your account, or when they are set aside for your use, whichever is earliest.

(f) *Period for which earned income is counted.* For purposes of determining subsidy eligibility and, if eligible, whether you should receive a full or partial subsidy, we consider all of the countable earned income you receive (or expect to receive) during the year for which you are applying for this subsidy. However, in the first year that you or your spouse apply for the subsidy, we consider all of the countable earned income you and your living-with spouse receive starting from the month that you or your living-with spouse have filed an application for the subsidy through the end of the calendar year. If we count your income for only a portion of the year, the income limit for subsidy eligibility will be adjusted accordingly. For example, if we count your income for 6 consecutive months of the year (July through December), the income limit for subsidy eligibility will be half of the income limit applicable for the full year.

§ 418.3325 What earned income do we not count?

(a) While we must know the source and amount of all of your earned income, we do not count all of it to determine your subsidy eligibility and whether you should receive a full or partial subsidy. We apply these income exclusions in the order listed in paragraph (b) of this section to your income. We never reduce your earned income below zero or apply any unused earned income exclusion to unearned income.

(b) For the year or partial year that we are determining your eligibility for the subsidy, we do not count as earned income—

(1) Any refund of Federal income taxes you or your living-with spouse receive under section 32 of the Internal Revenue Code (relating to the earned income tax credit) and payment you receive from an employer under section 3507 of the Internal Revenue Code (relating to advance payments of earned income tax credit);

(2) Earned income which is received infrequently or irregularly if the total of such income does not exceed $30 per calendar quarter.

(3) Any portion of the $20 per month exclusion described in § 416.1124(c)(12) of this chapter which has not been excluded from your combined unearned income (or the combined unearned income of you and your living-with spouse);

(4) $65 per month of your earned income a year (or the combined earned income of you and your living-with spouse receive in that same year);

(5) Earned income you use to pay impairment-related work expenses described in § 416.976 of this chapter, if you are receiving a social security disability insurance benefit, your disabling condition(s) does not include blindness and you are under age 65. We consider that you attain age 65 on the day before your 65th birthday. In lieu of determining the actual amount of these expenses, we will assume that the value of these work expenses is equal to a standard percentage of your total earned income per month if you tell us that you have impairment-related work expenses. The amount we exclude will be equal to the average percentage of gross earnings excluded for SSI recipients who have such expenses. Initially, the exclusion for impairment-related work expenses will be 16.3 percent of the gross earnings. We may adjust the percentages if the average percentage of gross earnings excluded for supplemental security income (SSI) recipients changes. If we make such a change we will publish a notice in the **Federal**

Register. If excluding impairment-related work expenses greater than the standard percentage of your earned income would affect your eligibility or subsidy amount, you may establish that your actual expenses are greater than the standard percentage of your total earned income. You may do so by contacting us and providing evidence of your actual expenses. The exclusion of impairment-related work expenses also applies to the earnings of your living-with spouse if he or she is receiving a social security disability insurance benefit, the disabling condition(s) does not include blindness and he or she is under age 65;

(6) One-half of your remaining earned income (or combined earned income of you and your living-with spouse); and

(7) Earned income you use to meet any expenses reasonably attributable to the earning of the income if you receive a social security disability insurance benefit based on blindness and you are under age 65. We consider that you attain age 65 on the day before your 65th birthday. In lieu of determining the actual amount of these expenses, we will assume that the value of these expenses is equal to a standard percentage of your total earned income per month. The amount we exclude will be equal to the average percentage of gross earnings excluded for SSI recipients who have such expenses. Initially, the exclusion for blind work expenses will be 25 percent of the gross earnings. We may adjust the percentages if the average percentage of gross earnings excluded for SSI recipients changes. If we make such a change we will publish a notice in the **Federal Register**. If excluding impairment-related expenses greater than the standard percentage of your earned income would affect your eligibility or subsidy amount, you may establish that your actual expenses are greater than the standard percentage of your earned income. You may do so by contacting us and providing evidence of your actual expenses. The exclusion of work expenses also applies to the earnings of your living-with spouse if he or she receives a social security disability insurance benefit based on blindness and is under age 65.

§ 418.3330 What is unearned income?

Unearned income is all income that is not earned income. We describe some of the types of unearned income we count in § 418.3335.

§ 418.3335 What types of unearned income do we count?

(a) Some of the types of unearned income we count are described in § 416.1121(a)–(g) of this chapter.

(b) We also count in-kind support and maintenance as unearned income. In-kind support and maintenance is any food and shelter that is given to you or that you receive because someone else pays for it (*see* § 418.3345).

§ 418.3340 How do we count your unearned income?

(a) *When income is received.* We count unearned income as available to you at the earliest of the following points: when you receive it, when it is credited to your account, or when it is set aside for your use.

(b) *When income is counted.* For purposes of determining eligibility and whether you should receive a full or partial subsidy, we count all of the unearned income you and your living-with spouse receive (or expect to receive) during the year for which you are applying for this benefit unless the income is excluded under § 418.3350. However, in the first year you or your spouse apply for the subsidy, we count the unearned income both you and your living-with spouse receive (or expect to receive) starting from the month that you or your living-with spouse have filed an application for the subsidy. If we count your income for only a portion of the year, the income limits for subsidy eligibility will be adjusted accordingly. For example, if we count your income for 6 consecutive months of the year (July through December), the income limit for subsidy eligibility will be half of the income limit applicable for the full year.

(c) *Amount considered as income.* We may include more or less of your income than you actually receive.

(1) We include more than you actually receive where another benefit payment (such as a Social Security benefit) has been reduced to recover an overpayment. In such a situation, you are repaying a legal obligation through the withholding of portions of your benefit amount, and the amount of this withholding is part of your unearned income.

(2) We also include more than you actually receive if amounts are withheld from unearned income because of a garnishment, or to pay a debt or other legal obligation, or to make any other payment such as payment of your Medicare Part B or C premium.

(3) We include less than you actually receive if part of the payment is for an expense you had in getting the payment. For example, if you are paid for damages you receive in an accident, we subtract from the amount of the payment your medical, legal, or other expenses connected with the accident. If you receive a retroactive check from a benefit program, we subtract legal fees connected with the claim. We do not subtract from any taxable unearned income the part you have to use to pay personal income taxes. The payment of taxes is not an expense you have in getting income.

(d) *Retroactive benefits.* We count retroactive monthly benefits such as social security benefits as unearned income in the year you receive the retroactive benefits.

(e) *Certain veterans benefits.* If you receive a veterans benefit that includes an amount paid to you because of a dependent, we do not count as your unearned income the amount paid to you because of the dependent. If you are a dependent of an individual who receives a veterans benefit and a portion of the benefit is attributable to you as a dependent, we count the amount attributable to you as your unearned income if you reside with the veteran or you receive your own separate payment from the Department of Veterans Affairs.

§ 418.3345 How do we determine the value of in-kind support and maintenance?

(a) You can receive in-kind support and maintenance, such as food and shelter, if you live alone, with others, or in a facility, or in an institution. The amount of income you derive from in-kind support and maintenance is the current market value of the food and shelter provided to you and your living-with spouse by someone other than you or your living-with spouse. Shelter includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services.

(b) The maximum amount of income we count from in-kind support and maintenance during a month is limited to one-third of the monthly SSI Federal benefit rate for an eligible individual (as described in § 416.410 of this chapter) that is in effect for the period for which you are applying or are eligible for a subsidy. If you are married and living with your spouse, the maximum amount of income you and your spouse receive from in-kind support and maintenance during a month is limited to one-third of the monthly SSI Federal benefit rate for an eligible couple (as described in § 416.412 of this chapter). If the current market value of the in-kind support and maintenance you receive is greater than one-third of the applicable monthly SSI Federal benefit rate, we count only one-

third of the applicable monthly SSI Federal benefit rate as income.

§ 418.3350 What types of unearned income do we not count?

(a) While we must know the source and amount of all of your unearned income, we do not count all of it to determine your eligibility for the subsidy. We apply to your unearned income the exclusions in § 418.3350(b) in the order listed. However, we never reduce your unearned income below zero and we never apply any unused unearned income exclusion to earned income except for the $20 per month exclusion described in § 416.1124(c)(12) of this chapter. For purposes of determining eligibility for a subsidy, and whether you should receive a full or partial subsidy, we treat the $20 per month exclusion as a $240 per year exclusion.

(b) We do not count as income the unearned income described in § 416.1124(c)(1) through (c)(5), (c)(7) through (c)(12), and (c)(14) through (c)(20) of this chapter.

(c) We exclude unearned income which is received either infrequently or irregularly provided the total of such income does not exceed $60 per calendar quarter.

(d) We do not count as income any dividends or interest earned on resources we count.

Resources

§ 418.3401 What are resources?

For purposes of this subpart, resources are cash or other assets that an individual owns and could convert to cash to be used for his or her support and maintenance.

§ 418.3405 What types of resources do we count?

(a) We count liquid resources. Liquid resources are cash or other property which can be converted to cash within 20 days, excluding certain nonwork days as explained in § 416.120(d) of this chapter. Examples of resources that are ordinarily liquid are stocks, bonds, mutual fund shares, promissory notes, mortgages, life insurance policies, financial institution accounts (including savings, checking, and time deposits, also known as certificates of deposit), retirement accounts (such as individual retirement accounts (IRA), 401(k) accounts), and similar items.

(b) We count the equity value of real property as a resource. However, we do not count the home that is your principal place of residence and the land on which it is situated as a resource as defined in § 418.3425(a).

§ 418.3410 Whose resources do we count?

(a) We count your resources. If you are married and live with your spouse in the month you file for a subsidy, or when we redetermine your eligibility for a subsidy as described in § 418.3125, we count the resources of you and your spouse regardless of whether one or both of you apply or are eligible for the subsidy.

(b) We will determine your eligibility based on your resources alone if you are not married or if you are married but you are separated from your spouse at the time you apply for a subsidy or at the time we redetermine your eligibility for a subsidy as described in § 418.3125.

(c) If your subsidy is based on the resources of you and your spouse and we redetermine your subsidy as described in § 418.3120(b)(1), we will stop counting the resources of your spouse in the month following the month that we receive a report that your marriage ended due to death, divorce, or annulment; or a report that you and your spouse stopped living together.

(d) If your subsidy is based on the resources of you and your spouse, we will continue counting the resources of both you and your spouse if one of you is temporarily away from home as described in § 404.347 of this chapter.

§ 418.3415 How do we determine countable resources?

(a) *General rule.* Your countable resources are determined as of the first moment of the month for which we determine your eligibility based on your application for a subsidy or for which we redetermine your eligibility for a subsidy. A resource determination is based on what assets you (and your living-with spouse, if any) have, what their values are, and whether they are excluded as of the first moment of the month. We will use this amount as your countable resources at the point when we determine your eligibility for the subsidy unless you report to us that the value of your resources has changed.

(b) *Equity value.* Resources, other than cash, are evaluated according to your (and your spouse's, if any) equity in the resources. For purposes of this subpart, the equity value of an item is defined as the price for which that item, minus any encumbrances, can reasonably be expected to sell on the open market in the particular geographic area involved.

(c) *Relationship of income to resources.* Cash you receive during a month is evaluated under the rules for counting income during the month of receipt. If you retain the cash until the first moment of the following month, the cash is countable as a resource unless it is otherwise excludable.

§ 418.3420 How are funds held in financial institution accounts counted?

(a) *Owner of the account.* Funds held in a financial institution account (including savings, checking, and time deposits also known as certificates of deposit) are considered your resources if you own the account and can use the funds for your support and maintenance. We determine whether you own the account and can use the funds by looking at how the account is held.

(b) *Individually-held account.* If you are designated as the sole owner by the account title and you can withdraw and use funds from that account for your support and maintenance, all of that account's funds are your resource regardless of the source. For as long as these conditions are met, we presume that you own 100 percent of the funds in the account. This presumption is not rebuttable.

(c) *Jointly-held account.* (1) If you are the only subsidy claimant or subsidy recipient who is an account holder on a jointly held account, we presume that all of the funds in the account belong to you. If more than one subsidy claimant or subsidy recipient are account holders, we presume that the funds in the account belong to those individuals in equal shares.

(2) If you disagree with the ownership presumption as described in paragraph (c)(1) of this section, you may rebut the presumption. Rebuttal is a procedure which permits an individual to furnish evidence and establish that some or all of the funds in a jointly-held account do not belong to him or her.

§ 418.3425 What resources do we exclude from counting?

In determining your resources (and the resources of your spouse, if any) the following items shall be excluded:

(a) Your home. For purposes of this exclusion, a home is any property in which you (and your spouse, if any) have an ownership interest and which serves as your principal place of residence. This property includes the shelter in which an individual resides, the land on which the shelter is located, and outbuildings;

(b) Non-liquid resources, other than real property. Non-liquid resources are resources that are not liquid resources as defined in § 418.3405;

(c) Property of a trade or business which is essential to the means of self-support as provided in § 416.1222 of this chapter;

(d) Nonbusiness property which is essential to the means of self-support as provided in § 416.1224 of this chapter;

(e) Stock in regional or village corporations held by natives of Alaska during the twenty-year period in which the stock is inalienable pursuant to the Alaska Native Claims Settlement Act (see § 416.1228 of this chapter);

(f) Life insurance owned by an individual (and spouse, if any) to the extent provided in § 416.1230 of this chapter;

(g) Restricted allotted Indian lands as provided in § 416.1234 of this chapter;

(h) Payments or benefits provided under a Federal statute other than title XVIII of the Act where exclusion is required by such statute;

(i) Disaster relief assistance as provided in § 416.1237 of this chapter;

(j) Funds up to $1,500 for the individual and $1,500 for the spouse who lives with the individual if these funds are set aside for burial expenses of the individual and spouse;

(k) Burial spaces, as provided in § 416.1231(a) of this chapter;

(l) Title XVI or title II retroactive payments as provided in § 416.1233 of this chapter;

(m) Housing assistance as provided in § 416.1238 of this chapter;

(n) Refunds of Federal income taxes and advances made by an employer relating to an earned income tax credit, as provided in § 416.1235 of this chapter;

(o) Payments received as compensation incurred or losses suffered as a result of a crime, as provided in § 416.1229 of this chapter;

(p) Relocation assistance from a State or local government, as provided in § 416.1239 of this chapter;

(q) Dedicated financial institution accounts as provided in § 416.1247 of this chapter;

(r) A gift to, or for the benefit of, an individual who has not attained 18 years of age and who has a life-threatening condition, from an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code. The resource exclusion applies to any in-kind gift that is not converted to cash, or to a cash gift that does not exceed $2,000; and

(s) Funds received and conserved to pay for medical and/or social services as provided in § 416.1103 of this chapter.

Adjustments and Terminations

§ 418.3501 What could cause us to increase or reduce your subsidy or terminate your subsidy eligibility?

(a) Certain changes in your circumstances could cause us to increase or reduce your subsidy or terminate your subsidy eligibility. These changes include (but are not limited to) changes to:

(1) Your income;

(2) Your spouse's income if you are married and living with your spouse;

(3) Your resources;

(4) Your spouse's resources if you are married and living with your spouse; and

(5) Your family size.

(b) We will periodically review your circumstances (as described in § 418.3125) to make sure you are still eligible for a subsidy and, if eligible, whether you should receive a full or partial subsidy.

(c) If you report that your circumstances have changed or we receive other notice of such a change after we determine that you are eligible, we will review your circumstances as described in § 418.3120 to determine if you are still eligible.

§ 418.3505 How would an increase, reduction or termination affect you?

(a) An *increase* in your subsidy means that you would be able to pay a lower premium to participate in the Medicare Part D prescription drug program. An increased subsidy may also result in a reduction in any deductible or copayments for which you are responsible.

(b) A *reduction* in your subsidy means that you would have to begin to pay a premium or a higher premium to participate in the Medicare Part D prescription drug program. You may also have to begin to pay a deductible and higher copayments or increase the amounts of these payments.

(c) A *termination* means that you would no longer be eligible for a subsidy under the Medicare Part D prescription drug program.

§ 418.3510 When would an increase, reduction or termination start?

We are required to give you a written notice of our proposed action before increasing, reducing, or terminating your subsidy. We will not give this advance notice where we have factual information confirming your death, such as through a report by your surviving spouse, a legal guardian, a close relative, or a landlord. The notice will tell you the first month that we plan to make the change. The notice will also give you appeal rights which are explained in detail in §§ 418.3601–418.3670. Your appeal rights for a reduction or termination will include the right to continue to receive your subsidy at the previously established level until there is a decision on your appeal request. You will not be required to pay back any subsidy you received while your appeal was pending.

§ 418.3515 How could you qualify for a subsidy again?

Unless you subsequently qualify as a deemed eligible person (per 42 CFR 423.773(c)), you must file a new application for a subsidy and meet all the requirements in § 418.3101.

Determinations and the Administrative Review Process

§ 418.3601 When do you have the right to administrative review?

You have the right to an administrative review of the initial determination we make about your eligibility and about your continuing eligibility for a subsidy and any other matter that gives you the right to further review as discussed in § 418.3605. If you are married and living with your spouse and your spouse's eligibility for a subsidy may be adversely affected by our decision upon review, we will notify your spouse before our review and give him or her the opportunity to present additional information for us to consider.

§ 418.3605 What is an initial determination?

Initial determinations are the determinations we make that are subject to administrative and judicial review. The initial determination will state the relevant facts and will give the reasons for our conclusions. Examples of initial determinations that are subject to administrative and judicial review include but are not limited to:

(a) The calculation of your income and/or resources;

(b) The determination about whether or not you are eligible for a subsidy and if so, whether you receive a full or partial subsidy;

(c) The determination to reduce your subsidy; and

(d) The determination to terminate your subsidy.

§ 418.3610 Is there administrative or judicial review for administrative actions that are not initial determinations?

Administrative actions that are not initial determinations may be reviewed by us, but they are not subject to the administrative or judicial review process as provided by these sections. For example, changes in your prescription drug program or voluntary disenrollment in the Part D program are not initial determinations that are subject to the administrative review process.

§ 418.3615 Will we mail you a notice of the initial determination?

(a) We will mail a written notice of the initial determination to you at your

last known address. Generally, we will not send a notice if your premium subsidy stops because of your death or if the initial determination is a redetermination that your eligibility for a subsidy and the amount of your subsidy has not changed.

(b) The written notice that we send will tell you:

(1) What our initial determination is;

(2) The reasons for our determination; and

(3) The effect of our determination on your right to further review.

(c) We will mail you a written notice before increasing, reducing, or terminating your subsidy. The notice will tell you the first month that we plan to make the change and give you appeal rights. Your appeal rights for a reduction or termination will include the right to continue to receive your subsidy at the previously established level until there is a decision on your appeal request.

§ 418.3620 What is the effect of an initial determination?

An initial determination is binding unless you request an appeal within the time period stated in § 418.3630(a).

§ 418.3625 What is the process for administrative review?

The process for administrative review of initial determinations is either a hearing conducted by telephone or a case review. We will provide you with a hearing by telephone when you appeal the initial determination made on your claim, unless you choose not to participate in a telephone hearing. If you choose not to participate in a telephone hearing, the review will consist of a case review. The hearing will be conducted by an individual who was not involved in making the initial determination. The individual who conducts the hearing will make the final decision after the hearing. If you are dissatisfied after we have made a final decision, you may file an action in Federal district court.

(a) *Notice scheduling the telephone hearing.* Once you request a telephone hearing, we will schedule the hearing and send you a notice of the date and time of the hearing at least 20 days before the hearing. The notice will contain a statement of the specific issues to be decided and tell you that you may designate a personal representative (as defined in 42 CFR 423.772) to represent you during the proceedings. The notice will explain the opportunity and procedure for reviewing your file and for submitting additional evidence prior to the hearing. It also will provide a brief explanation of the proceedings, of the right and process to subpoena witnesses and documents, of the procedures for requesting a change in the time or date of your hearing, and of the procedure for requesting interpreter services.

(b) *Opportunity to review your file.* Prior to the telephone hearing, you will be able to review the information that was used to make an initial determination in your case. You can provide us with additional information you wish to have considered at the hearing.

(c) *Hearing Waived, Rescheduled, or Missed.* If you decide you do not want a hearing by telephone or if you are not available at the time of the scheduled hearing, the decision in your case will be made by a case review. This means that the decision will be based on the information in your file and any additional information you provide. You may ask for a change in the time and date of the telephone hearing; this should be done at the earliest possible opportunity prior to the hearing. Your request must state your reason(s) for needing the change in time or date and state the new time and date you want the hearing to be held. We will change the time and date, but not necessarily to your preferred time or date, of the telephone hearing if you have good cause. If you miss the scheduled hearing and the decision in your case is decided by a case review, we will provide a hearing, at your written request, if we decide you had good cause for missing the scheduled hearing. Examples of good cause include, but are not limited to, the following:

(1) You have attempted to obtain a representative but need additional time;

(2) Your representative was appointed within 30 days of the scheduled hearing and needs additional time to prepare for the hearing;

(3) Your representative has a prior commitment to be in court or at another administrative hearing on the date scheduled for your hearing;

(4) A witness who will testify to facts material to your case would be unavailable to participate in the scheduled hearing and the evidence cannot be obtained any other way;

(5) You are unrepresented, and you are unable to respond to the notice of hearing because of any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) that you may have; or

(6) You did not receive notice of the hearing appointment.

(d) *Witnesses at hearing.* When we determine that it is reasonably necessary for the full presentation of a case, we may issue a subpoena to compel the production of certain evidence or testimony.

§ 418.3630 How do you request administrative review?

(a) *Time period for requesting review.* You must request administrative review within 60 days after the date you receive notice of the initial determination (or within the extended time period if we extend the time as provided in paragraph (c) of this section). You can request administrative review in person, by phone, fax, or mail. If you miss the time frame for requesting administrative review, you may ask us for more time to request a review. The process for requesting an extension is explained further in paragraph (c) of this section.

(b) *Where to file your request.* You can request administrative review by mailing or faxing a request or calling or visiting any Social Security office.

(c) *When we will extend the time period to request administrative review.* If you want a review of the initial determination but do not request one within 60 days after the date you receive notice of the initial determination, you may ask us for more time to request a review. Your request for an extension must explain why it was not filed within the stated time period. If you show us that you had good cause for missing the deadline, we will extend the time period. To determine whether good cause exists, we use the standards explained in § 418.3640.

§ 418.3635 Can anyone request administrative review on your behalf?

Your personal representative (as defined in 42 CFR 423.772) may request administrative review on your behalf. That person can send additional information to us on your behalf and participate in the hearing.

§ 418.3640 How do we determine if you had good cause for missing the deadline to request administrative review?

(a) In determining whether you have shown that you have good cause for missing a deadline to request review we consider:

(1) What circumstances kept you from making the request on time;

(2) Whether our action misled you;

(3) Whether you did not understand the requirements of the Act resulting from amendments to the Act, other legislation, or court decisions; and

(4) Whether you had any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which prevented you from filing a timely request or from understanding or knowing about the need to file a timely request for review.

(b) Examples of circumstances where good cause may exist include, but are not limited to, the following situations:

(1) You were seriously ill and were prevented from contacting us in person, in writing, or through a friend, relative, or other person.

(2) There was a death or serious illness in your immediate family.

(3) Important records were destroyed or damaged by fire or other accidental cause.

(4) You were trying very hard to find necessary information to support your claim but did not find the information within the stated time periods.

(5) You asked us for additional information explaining our action within the time limit, and within 60 days of receiving the explanation you requested a review.

(6) We gave you incorrect or incomplete information about when and how to request administrative review.

(7) You did not receive notice of the initial determination.

(8) You sent the request to another Government agency in good faith within the time limit and the request did not reach us until after the time period had expired.

(9) Unusual or unavoidable circumstances exist, including the circumstances described in paragraph (a)(4) of this section, which show that you could not have known the need to file timely, or which prevented you from filing timely.

§ 418.3645 Can you request that the decision-maker be disqualified?

The person designated to conduct your hearing will not conduct the hearing if he or she is prejudiced or partial with respect to any party or has any interest in the matter pending for decision. If you object to the person who will be conducting your hearing, you must notify us at your earliest opportunity. The Commissioner or the Commissioner's designee will decide whether to appoint another person to conduct your hearing.

§ 418.3650 How do we make our decision upon review?

After you request review of our initial determination, we will review the information that we considered in making the initial determination and any other information we receive. We will make our decision based on this information. The issues that we will review are the issues with which you disagree. We may consider other issues, but we will provide you with advance notice of these other issues as explained in § 418.3625. If you are dissatisfied with our final decision, you may file an action in Federal district court.

§ 418.3655 How will we notify you of our decision after our review?

We will mail a written notice of our decision on the issue(s) you appealed to you at your last known address. Generally, we will not send a notice if your subsidy stops because of your death. The written notice that we send will tell you:

(a) What our decision is;

(b) The reasons for our decision;

(c) The effect of our decision; and

(d) Your right to judicial review of the decision.

§ 418.3665 Can your request for a hearing or case review be dismissed?

We will dismiss your request for a hearing or case review under any of the following conditions:

(a) At any time before notice of the decision is mailed, you ask that your request for administrative review be withdrawn; or

(b) You failed to request administrative review timely and did not have good cause for missing the deadline for requesting review.

§ 418.3670 How will you be notified of the dismissal?

We will mail a written notice of the dismissal of your request for administrative review to you at your last known address. The dismissal is not subject to judicial review and is binding on you unless we vacate it. The decision-maker may vacate any dismissal of your request for administrative review if, within 60 days after the date you receive the dismissal notice, you request that the dismissal be vacated and show good cause why the request should not be dismissed. The decision-maker shall advise you in writing of any action he or she takes.

§ 418.3675 How does our decision affect you?

Our decision is binding unless you file an action in Federal district court seeking review of our final decision. You may file an action in Federal district court within 60 days after the date you receive notice of the decision. You may request that the time for filing an action in Federal district court be extended. The request must be in writing and it must give the reasons why the action was not filed within the stated time period. The request must be filed with the decision-maker who issued the final decision in your case. If you show that you had good cause for missing the deadline, we will extend the deadline. We will use the standards in § 418.3640 to decide if you had good cause to miss the deadline.

§ 418.3680 What happens if your case is remanded by a Federal court?

When a Federal court remands a case to the Commissioner for further consideration, the decision-maker (as described in § 418.3670) acting on behalf of the Commissioner, may make a decision. That component will follow the procedures in § 418.3625, unless we decide that we can make a decision that is wholly favorable to you without another hearing. Any issues relating to your subsidy may be considered by the decision-maker whether or not they were raised in the administrative proceedings leading to the final decision in your case.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–148701–03]

RIN 1545–BC72

Collection After Assessment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the collection of tax liabilities after assessment. The proposed regulations reflect changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998. These regulations would affect persons determining how long the Internal Revenue Service has to collect taxes that have been properly assessed.

DATES: Written or electronically generated comments and requests for a public hearing must be received by June 2, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–148701–03), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–148701–03), 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* (indicate IRS and REG–148701–03).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Debra A.

Kohn, (202) 622–7985; concerning submissions of comments or requests for a hearing, Guy Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 6502 of the Internal Revenue Code (Code). The regulations reflect the amendment of the Code by section 3461 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 1998) (Public Law 105–206, 112 Stat. 685, 764).

Collection of Tax Liabilities After Assessment Under Section 6502

Pursuant to section 6502 of the Code, the IRS generally has 10 years from the date of assessment to collect a timely assessed tax liability. Prior to January 1, 2000, the effective date of section 3461 of RRA 1998, section 6502 permitted the IRS to enter into agreements with the taxpayer to extend the period of limitations on collection at any time prior to the expiration of the period provided in section 6502. Prior to the enactment of RRA 1998, the IRS used these collection extension agreements, or waivers, in various circumstances to protect its ability to collect a tax liability beyond the original 10-year period of limitations on collection. For example, the IRS historically conditioned consideration of an offer in compromise upon the execution of a collection extension agreement or waiver.

In addition, the Code contains several provisions that operate to toll the period of limitations on collection upon the occurrence of certain events. For example, section 6331(k) operates in part to suspend the period of limitations on collection for the period of time during which an offer in compromise is pending, for 30 days after rejection, and while a timely filed appeal is pending. Similarly, section 6503(h) operates to suspend the period of limitations on collection for the period of time during which the IRS is prohibited from collecting a tax due to a bankruptcy proceeding, and for 6 months thereafter. These statutory suspension provisions toll the period of limitations on collection even if the period of limitations on collection previously has been extended pursuant to an executed collection extension agreement. *See Klingshirn* v. *United States (In re Klingshirn)*, 147 F.3d 526 (6th Cir. 1998).

Section 3461 of RRA 1998 amended section 6502 of the Code to limit the ability of the IRS to enter into agreements extending the period of limitations on collection. Section 3461 of RRA 1998 also included an off-Code provision governing the continued effect of collection extension agreements executed on or before December 31, 1999.

Explanation of Provisions

The proposed regulations incorporate the amendments made by section 3461 of RRA 1998. The proposed regulations provide that the IRS may enter into an agreement to extend the period of limitations on collection if an extension agreement is executed: (1) At the time an installment agreement is entered into; or (2) prior to release of a levy pursuant to section 6343, if the release occurs after the expiration of the original period of limitations on collection.

The proposed regulations also incorporate the off-Code provision in section 3461(c) of RRA 1998 governing the continued effectiveness of extension agreements executed on or before December 31, 1999. The proposed regulations provide that if the extension agreement was executed in connection with an installment agreement on or before December 31, 1999, the extension agreement expires on the 90th day after the date agreed upon in the extension agreement. The proposed regulations provide that any other extension agreement executed on or before December 31, 1999, expires on the later of: (1) December 31, 2002, or if earlier, the date of which the extension agreement expired by its terms; or (2) the end of the original 10-year statutory period.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

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

A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Aaron D. Gregory of the Office of the Associate Chief Counsel (Procedure and Administration), Collection, Bankruptcy & Summonses Division.

List of Subjects in 26 CFR Part 301

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

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.6502–1 is revised to read as follows:

§ 301.6502–1 Collection after assessment.

(a) *General rule.* In any case in which a tax has been assessed within the applicable statutory period of limitations on assessment, a proceeding in court to collect the tax may be commenced, or a levy to collect the tax may be made, within 10 years after the date of assessment.

(b) *Agreement to extend the period of limitations on collection.* The Secretary may enter into an agreement with a taxpayer to extend the period of limitations on collection in the following circumstances:

(1) *Extension agreement entered into in connection with an installment agreement.* If the Secretary and the taxpayer enter into an installment agreement for the tax liability prior to the expiration of the period of limitations on collection, the Secretary

and the taxpayer, at the time the installment agreement is entered into, may enter into a written agreement to extend the period of limitations on collection to a date certain. A written extension agreement entered into under this paragraph shall extend the period of limitations on collection until the 89th day after the date agreed upon in the written agreement.

(2) *Extension agreement entered into in connection with the release of a levy under section 6343.* If the Secretary has levied on any part of the taxpayer's property prior to the expiration of the period of limitations on collection and the levy is subsequently released pursuant to section 6343 after the expiration of the period of limitations on collection, the Secretary and the taxpayer, prior to the release of the levy, may enter into a written agreement to extend the period of limitations on collection to a date certain. A written extension agreement entered into under this paragraph shall extend the period of limitations on collection until the date agreed upon in the extension agreement.

(c) *Continued effectiveness of agreements to extend the period of limitations on collection entered into on or before December 31, 1999*—(1) *In general.* Except as provided in paragraph (c)(2) of this section, if, on or before December 31, 1999, the Secretary and the taxpayer entered into a written agreement to extend the period of limitations on collection for a tax liability to a date after December 31, 2002, then, unless the written agreement expires by its terms prior to December 31, 2002, the period of limitations on collection expires on the later of—

(i) The last day of the original 10-year statutory period; or

(ii) December 31, 2002.

(2) *Written agreements entered into in connection with installment agreements.* If, on or before December 31, 1999, the Secretary and the taxpayer, in connection with an installment agreement, entered into a written agreement to extend the period of limitations on collection for a tax liability, the written agreement extends the period of limitations on collection until the 90th day after the date agreed upon in the written agreement.

(d) *Proceeding in court for the collection of the tax.* If a proceeding in court for the collection of a tax is begun within the period provided in paragraph (a) of this section (or within any extended period as provided in paragraphs (b) and (c) of this section), the period during which the tax may be collected by levy is extended until the liability for the tax or a judgment against the taxpayer arising from the liability is satisfied or becomes unenforceable.

(e) *Effect of statutory suspensions of the period of limitations on collection if executed collection extension agreement is in effect*—(1) Any statutory suspension of the period of limitations on collection tolls the running of the period of limitations on collection, as extended pursuant to an executed extension agreement under paragraph (b) or (c) of this section, for the amount of time set forth in the relevant statute.

(2) The following example illustrates the principle set forth in this paragraph (e):

Example. In June of 2003, the Internal Revenue Service (IRS) enters into an installment agreement with the taxpayer to provide for periodic payments of the taxpayer's timely assessed tax liabilities. At the time the installment agreement is entered into, the taxpayer and the IRS execute a written agreement to extend the period of limitations on collection. The extension agreement executed in connection with the installment agreement operates to extend the period of limitations on collection to the date agreed upon in the extension agreement, plus 89 days. Subsequently, and prior to the expiration of the extended period of limitations on collection, the taxpayer files a bankruptcy petition under chapter 7 of the Bankruptcy Code and receives a discharge from bankruptcy a few months later. Section 6503(h) of the Internal Revenue Code operates to suspend the running of the previously extended period of limitations on collection for the period of time the IRS is prohibited from collecting due to the bankruptcy proceeding, and for 6 months thereafter. The new expiration date for the IRS to collect the tax is the date agreed upon in the previously executed extension agreement, plus 89 days, plus the period during which the IRS is prohibited from collecting due to the bankruptcy proceeding, plus 6 months.

(f) *Date when levy is considered made.* The date on which a levy on property or rights to property is considered made is the date on which the notice of seizure required under section 6335(a) is given.

(g) *Effective date.* This section is applicable on the date final regulations are published in the **Federal Register**.

Mark E. Matthews,

Deputy Commissioner of Services and Enforcement.

[FR Doc. 05–4280 Filed 3–3–05; 8:45 am]

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OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Parts 2200 and 2204

Revisions to Procedural Rules Governing Practice Before the Occupational Safety and Health Review Commission

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes several revisions to the procedural rules governing practice before the Occupational Safety and Health Review Commission.

DATES: Comments must be received by April 4, 2005.

FOR FURTHER INFORMATION CONTACT: Patrick Moran, Deputy General Counsel, (202) 606–5410, 1120 20th St., NW., Ninth Floor, Washington, DC 20036–3457.

SUPPLEMENTARY INFORMATION: On June 17, 2004 the Commission published an Advanced Notice of Proposed Rulemaking (ANPR), 69 FR 33878. In that notice the Commission announced that it was considering revisions to its rules concerning electronic filing, the expansion of the range of cases eligible for E–Z Trial, and the Settlement Part, the availability of sanctions for rules violations and expanding the authority of administrative law judges to impose such sanctions, the grounds for obtaining Commission review of interlocutory orders issued by its judges, and the restriction of practice before the Commission of lawyers and in-house company and union representatives. The Commission solicited public comments regarding these areas and invited the public to suggest other changes. The Commission thanks those who responded to the ANPR. The comments were helpful and played a large part in aiding the Commission to formulate these proposed rule changes. Now, the Commission asks for comments on these proposed rule changes, especially from those who practice before it.

Having considered the comments filed in response to the ANPR, this document proposes several revisions governing practice before the Occupational Safety and Health Review Commission. Although a few of the revisions are technical and clarifying in nature, this proposal also contains several significant changes to Commission practice and procedure. For example, the Commission is proposing new rules to allow and facilitate electronic service and filing of

pleadings, briefs and other documents. The Commission is also proposing restrictions on when non-attorneys may represent employers in Commission proceedings, modifications to its settlement and discovery rules, and changes to the eligibility limits on E–Z Trial.

Several rule changes are minor in nature. This document proposes several technical changes, including a correction to the Commission's nine-digit zip code in Rules 7 and 8. Several rules, such as Rule 11 and 41, have been moved. Accordingly, several rules have been renumbered, and cross-references updated. The Commission proposes revising Rule 5 to give its judges the discretion to require a party to respond to a motion or order filed shortly before the hearing where the normal response time would not expire until after the hearing has commenced. The Commission also proposes to amend Rule 8(f)(3) to eliminate the 3-day grace period for mailing documents after they have been faxed. The Commission believes that when a document has been faxed, there is no reason to delay mailing the original. A modification and reordering of the rule on privilege is also proposed. Specifically, the Commission proposes to abolish Rule 11 and move those parts that the Commission deems relevant to the Commission's rule on discovery, Rule 52. The Commission's experience has been that privilege issues generally arise in discovery, are generally resolved by the parties and if not resolved by the parties, are generally handled in the context of discovery disputes. Accordingly, the following portions of Rule 11 will be inserted in Rule 52:

(1) The assertion of a privilege must be accompanied by specific allegations and supporting affidavits, depositions, or testimony. It is believed that these requirements reduce the unwarranted assertion of privileges;

(2) Claimed privilege material may be examined in camera or *ex parte*;

(3) The judge is given wide latitude to fashion an appropriate protective order;

(4) A party unsuccessfully asserting a privilege may, as a matter of right, have the material sealed until review.

(5) The portion of the rule governing protective orders would be moved to Rule 52(e).

The Commission also proposes that, except for Simplified Proceedings, only attorneys in good standing be permitted to represent a party before the Commission or its judges. This restriction would not limit the right to appear before the Commission of any party, affected employee, or owner, partner, officer, or employee of a party when the party is a labor organization, or business entity. This proposal generated more public comment than any other mentioned in the ANPR. While the reaction was generally negative, we note that most of the comments came from practitioners who would be most affected by the proposal and from small employers and industry groups who were concerned about the increased costs necessitated by hiring an attorney. After we carefully considered the matter, we think the best course is limit in part non-attorney representation before the Commission. While we recognize the desire for economical access to the Commission's adjudicatory process, we also are concerned about accountability and the quality of representation. It has been the Commission's experience that lay representatives generally do not serve their clients well before the Commission. In particular, lay representatives have displayed difficulty in navigating the federal rules of evidence and procedure. On occasion lay representatives may represent more than one employer cited at a particular worksite and not fully comprehend the potential conflicts of interest such a situation can present. The Commission does believe, however, that non-legal representation can be effective for cases tried under the less demanding requirements of Simplified Proceedings and proposes to continue to permit lay representations in such cases.

The Commission proposes to redesignate the general rule on sanctions (currently Rule 41) without substantive change to Rule 101. Another relatively minor modification involves Rule 51 on Scheduling Conferences. The Commission would make such conferences discretionary with the judge. We believe that the current rule is beneficial in large and complex cases, but may be a hindrance in small to mid-sized cases.

The Commission proposes several changes to Rule 52, its Discovery Rule. The Commission believes that its procedures are unnecessarily complicated by the application of the extensive requirements for initial disclosures contained in Federal Rule of Civil Procedure (FRCP) 26(a). It is the view of the Commission that application of FRCP 26(a) is unworkable with *pro se* employers and results in needless additional expense to employers represented by counsel. Accordingly, the Commission would add a clause to Rule 52(a)(1) making Federal Rule 26(a) inapplicable to Commission proceedings. Also, as mentioned earlier, the Commission proposes to add a paragraph to Rule 52 setting forth its rule addressing claims of privilege.

The current Commission rule on oral arguments provides only that arguments before the Commission be electronically recorded. In the past, the Commissioners have found that a written transcript would aid them in reviewing the argument. Therefore, the Commission would amend Rule, 95(i)(1) to allow for a written transcription of oral arguments. Parties wishing to order a transcript would be able to purchase one at their own expense. The Commission would also require that any party who files a motion for oral argument indicate why oral argument would assist the Commission in deciding the case.

The Commission's Voluntary Settlement rule, Rule 101, predates the Mandatory Settlement rule, Rule 120. The Commission finds it redundant to have a separate voluntary and mandatory settlement rule. Therefore, the Commission proposes eliminating Rule 101 and includes a provision in Rule 120 expressly allowing a party to voluntarily enter the settlement process, at which time the requirements of Rule 120 would apply. The mandatory settlement rules are intended to deal with large, complex cases. It is the Commission's view that, before discovery is completed, the parties are generally not sufficiently familiar with the details of such cases to warrant entry into the mandatory settlement process. Thus, the Commission proposes to change the timing for entry into the mandatory settlement process until discovery is completed. In contrast, since cases involved in the voluntary settlement process may, in some cases, be relatively simple, parties will be allowed to enter the voluntary settlement process at any time.

Several additional changes to the Mandatory Settlement Rules are also proposed. The Commission proposes giving the settlement judge the authority to hold a ''mini-trial'' in order to narrow the issues remaining between the parties. It is the opinion of the Commission and its judges that such ''mini-trials'' would make clear to the parties both the strength and weaknesses of their case and, therefore, facilitate settlement. the mandatory settlement rule has generally proven successful, and the Commission believes that the procedure should be expanded for greater judicial economy and reduced cost to litigants. Accordingly, the Commission recommends lowering the eligibility limits from cases with an aggregate penalty of $200,000 to those with an aggregate penalty of $100,000.

Currently, there is no provision in the rules allowing the settlement judge to continue as the trial judge. The Commission believes that such a provision would be of benefit in those few large and complex cases that would require a significant amount of time for a new judge to become familiar with the case. If all parties, the settlement judge, and the Chief Administrative Law Judge agree to the settlement judge's continued participation as trial judge, we believe that judicial economies and reduced litigant expense would result. This new consent provision is predicated on the consent of the parties, the settlement judge, and the Chief Administrative Law Judge in order to ensure that the settlement judge's impartiality was not compromised by his or her participation in the settlement process. Therefore, the Commission would also add a provision that would allow settlement judge to remain as the trial judge upon the consent of the judge and all parties.

The Commission proposes several changes to its E–Z Trial Rules. First, it proposes changing the name from E–Z Trial to Simplified Proceedings. The Commission believes that the name ''E–Z Trial'' conveys a heightened sense of informality and that the name change more accurately represents the nature of these proceedings. Because these procedures have been a success, the Commission believes that the eligibility requirements should be loosened. Therefore, it proposes to expand eligibility by increasing the aggregate penalty limits to $20,000 for Rule 202(a) and $30,000 for Rule 202(b).

The Commission also proposes to amend its rules to permit and facilitate the electronic filing and service of documents. Objections to making electronic filing mandatory were received by several practitioners and the Secretary of Labor. These commentators pointed out that many small, pro se employers who appear before the Commission may not be able to file or receive documents electronically. While the Commission expects the number to dwindle in time, it agrees with the commentators that it would be premature to make electronic filing mandatory at this time. According, the Commission proposes tomake electronic filing optional. Among the highlights of the proposal:

(1) Electronic service of documents among the parties may be had only when all parties must participate.

(2) Electronic filing of a document with the Commission may be accomplished at any time by any party with the consent of the other parties and contingent upon the parties agreeing to electronic service.

(3) Service is effective upon receipt. The 3-day mailing presumption will not be included in the response time when a party is served electronically.

(4) Filing is effective upon receipt. Documents will be accompanied by a certificate of service.

(5) Only electronic signatures will be required.

(6) The rule will direct parties to the Commission's Web site for directions and technical specifications.

(7) Sensitive information will be given special treatment. (*See* Proposed Rule 8(g)(5) that will be set out in the rule and not on the Web site.)

Finally, the Commission proposes to amend its EAJA Rule 302 (29 CFR 2204.302) regarding when an EAJA application may be filed and the Commission's aggregation EAJA Rule 105(f), 29 CFR 2204.105(f). The current Rule 302, which requires an EAJA application to be filed within 30 days of a Commission order, is in tension with section 11 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 660 and the Federal Rules of Appellate Procedure (FRAP), which allow a party 60 days to appeal to the Circuit Court of Appeals, and developing case law. *See e.g. Scafar Contracting Inc.* v. *SOL*, 325 F.3d 422 (3d Cir. 2003). The Commission proposes to bring its rule in line with the Act, FRAP and developing case law and allow a party 30 days after the Commission decision becomes unreviewable in a Federal Circuit Court to file an EAJA application. Similarly, the Commission's current aggregation rule, which requires the net worth and number of employees of an EAJA applicant to be aggregated with that of affiliated companies, is at odds with the growing body of case law that disfavors such presumption of aggregation. *See e.g. National Association of Mfrs.* v. *DOL*, 159 F.3d 597 (D.C. Cir. 1998); *Caremore, Inc.* v. *NLRB*, 150 F.3d 628 (6th Cir. 1998). Rescinding its rule on aggregation will free the Commission to conform its aggregation requirements to this changing case law.

The Commission received several suggestions for additional charges to its rules. Generally, these suggestions involved among other things, pleading matters, such as the time for raising affirmative defenses; discovery issues, including the swearing of response to requests for admissions, the taking of depositions as of right; and the availability of subpoenas. While the Commission values these suggestions, they do not, in its view, represent serious problems and are generally best handled through the proper exercise of the judge's discretion in accordance with Commission rules. However, the Commission will monitor these areas and may consider these suggestions in future rules changes.

List of Subjects in 29 CFR Parts 2200 and 2204

Hearings and appeal procedures, Administrative practice and procedure.

Text of Amendment

For the reasons set forth in the preamble, the Occupational Safety and Health Review Commission proposes to amend title 29, chapter XX, parts 2200 and 2204 of the Code of Federal Regulations as follows:

PART 2200—[AMENDED]

1. The authority citation for part 2200 continues to read as follows:

Authority: 29 U.S.C. 661(g).

2. Section 2200.5 is revised to read as follows:

§ 2200.5 Extension of time.

Upon motion of a party, for good cause shown, the Commission or Judge may enlarge or shorten any time prescribed by these rules or prescribed by an order. All such motions shall be in writing but, in exigent circumstances in a case pending before a Judge, an oral request may be made and thereafter shall be followed by written motion filed with the Judge within 3 working days. A request for an extension of time should be received in advance of the date on which the pleading or document is due to be filed. However, in exigent circumstances, an extension of time may be granted even though the request was filed after the designated time for filing has expired. In such circumstances, the party requesting the extension must show, in writing, the reasons for the party's failure to make the request before the time prescribed for the filing had expired. The motion may be acted upon before the time for response has expired.

3. In § 2200.7, paragraphs (c) and (g) are revised to read as follows:

§ 2200.7 Service and notice.

* * * * *

(c) *How accomplished.* Unless otherwise ordered, service may be accomplished by postage pre-paid first class mail at the last known address, by electronic transmission, or by personal delivery. Service is deemed effected at the time of mailing (if by mail), at the time of receipt (if by electronic transmission), or at the time of personal delivery (if by personal delivery). Facsimile transmission of documents

and documents sent by an overnight delivery service shall be considered personal delivery. Legibility of documents served by facsimile transmission is the responsibility of the serving party. Documents may be served by electronic transmission only when all parties consent in writing and the certificate of service of the electronic transmission states such consent and the method of transmission. All parties must be electronically served. Electronic service must be accomplished by following the requirements set forth on the Commission's Web site (*http://www.OSHRC.gov.*).

* * * * *

(g) *Service on unrepresented employees.* In the event that there are any affected employees who are not represented by an authorized employee representative, the employer shall, immediately upon receipt of notice of the docketing of the notice of consent or petition for modification of the abatement period, post, where the citation is required to be posted, a copy of the notice of contest and a notice informing such affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall be deemed to comply with this paragraph:

(Name of employer)

Your employer has been cited by the Secretary of Labor for violation of the Occupational Safety and Health Act of 1970. The citation has been contested and will be the subject of a hearing before the OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION. Affected employees are entitled to participate in this hearing or parties under terms and conditions established by the OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION in its Rules of Procedure. Notice of intent to participate must be filed no later than 10 days before the hearing. Any notice of intent to participate should be sent to: Occupational Safety and Health Review Commission, Office of the Executive Secretary, One Lafayette Centre, 1120 20th Street, NW., Suite 980, Washington, DC 20036–3457.

All pleadings relevant to this matter may be inspected at: (Place reasonably convenient to employees, preferably at or near workplace.)

Where appropriate, the second sentence of the above notice will be deleted and the following sentence will be substituted:

The reasonableness of the period prescribed by the Secretary of Labor for abatement of the violation has been contested and will be the subject of a hearing before the OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

* * * * *

4. Section 2200.8 is revised to read as follows:

§ 2200.8 Filing.

(a) *What to file.* All papers required to be served on a party or intervenor, except for those papers associated with part of a discovery request under Rules 52 through 56, shall be filed either before service or within a reasonable time thereafter.

(b) *Where to file.* Prior to assignment of a case to a Judge, all papers shall be filed with the Executive Secretary at One Lafayette Centre, 1120 20th Street, NW., Suite 980, Washington, DC 20036–3457. Subsequent to the assignment of the case to a Judge, all papers shall be filed with the Judge at the address given in the notice informing of such assignment. Subsequent to the docketing of the Judge's report, all papers shall be filed with the Executive Secretary, except as provided in § 2200.90(b)(3).

(c) *How to file.* Unless otherwise ordered, filings may be accomplished by postage-prepaid first class mail, personal delivery, or electronic transmission or facsimile transmission.

(d) *Number of copies.* Unless otherwise ordered or stated in this part:

(1) If a case is before a Judge or if it has not yet been assigned to a Judge, only the original of a document shall be filed.

(2) If a case is before the Commission for review, the original and eight copies of a document shall be filed.

(e) *Filing date.* (1) Filing date. Except for the documents listed in paragraph (e)(2) of this section, filing is effective upon mailing, if by mail, upon receipt by the Commission, if filing is by personal delivery, overnight delivery service, facsimile transmission or electronic transmission.

(2) Filing is effective upon receipt for requests for interlocutory reviews (§ 2200.73(b)), petitions for discretionary reviews (§ 2200.91), and EAJA applications (§ 2204.301).

(3) Counsel and the parties shall have sole responsibility for insuring that the document is timely received by the Commission.

(f) *Facsimile transmission.* (1) Any document may be filed with the Commission or its Judges by facsimile transmission. Filing shall be deemed completed at the time that the facsimile transmission is received by the Commission or the Judge. The filed facsimile shall have the same force and effect as the original.

(2) All facsimile transmissions shall include a facsimile of the appropriate certificate of service.

(3) It is the responsibility of parties desiring to file documents by the use of facsimile transmission equipment to utilize equipment that is compatible with facsimile transmission equipment operated by the Commission. Legibility of the transmitted documents is the responsibility of the serving party.

(g) *Electronic filing.* (1) Where all parties consent to electronic service and electronic filing, a document may be filed by electronic transmission with the Commission and its judges. The certificate of service accompanying the document must state that the other parties consent to filing by electronic transmission. The electronic transmission shall be in the manner specified by the Commission's Web site (*http://www.OSHRC.gov*).

(2) A document filed in conformance with these rules constitutes a written document for the purpose of applying these rules, and a copy printed by the Commission and placed in the case file shall have the same force and effect as the original.

(3) A certificate of service shall accompany each document electronically filed. The certificate shall set forth the dates and manner of both filing and service. It is the responsibility of the transmitting party to retain records showing the date of transmission, including receipts.

(4) A party that files a document by an electronic transmission shall utilize equipment and software that is compatible with equipment operated by the Commission and shall be responsible for the legibility of the document.

(5) Information that is sensitive but not privileged shall be filed as follows:

(i) If Social Security numbers must be included in a document, only the last four digits of that number shall be used;

(ii) If names of minor children must be mentioned, only the initials of that child shall be used;

(iii) If dates of birth must be included, only the year shall be used;

(iv) If financial account numbers must be filed, only the last four digits of these numbers shall be used;

(v) If a personal identifying number, such as a driver's license number must be filed, only the last four digits shall be used. Parties shall exercise caution when filing medical records, medical treatment records, medical diagnosis records, employment history, and individual financial information, and

shall redact or exclude certain materials unnecessary to a disposition of the case.

(6) A transmittal letter shall not be filed electronically or by other means when a document is transmitted noting:

(i) The transmittal of a document;

(ii) The inclusion of an attachment;

(iii) A request for a return receipt; or

(iv) A request for additional information concerning the filing.

(7) The signature line of any document shall include the notation ''/s/'' followed by the typewritten name or graphical duplicate of the hand-written signature of the party representative filing the document. Such representation of the signature shall be deemed to be the original signature of the representative for all purposes unless the party representative shows that such representation of the signature was unauthorized.

(8) Privileged information shall not be filed electronically. Privileged information or information that is asserted by any party to be privileged shall not be filed electronically.

§ 2200.11 [Removed and Reserved]

5. Section 2200.11 is removed and reserved.

6. In § 2200.22, paragraph (a) is revised to read as follows:

§ 2200.22 Representation of parties and intervenors.

(a)(1) *Representation.* Any party or intervenor may appear in person, through an attorney or, when a case is heard in simplified proceedings, through another representative who is not an attorney.

(2) *Attorneys.* Attorneys admitted to practice before the highest court of any State, Territory, District, Commonwealth, or possession of the United States, and in good standing, are permitted to practice before the Commission.

(3) *Other persons.* A person who is not authorized to practice before the Commission as an attorney under paragraph (a)(1) of this section may practice before the Commission as a representative of a party if he is:

(i) A party;

(ii) An affected employee;

(iii) An owner, partner, officer, or employee of a party when the party is a labor organization, a partnership, a corporation, or other business entity.

(4) A representative must file an appearance in accordance with § 2200.23. In the absence of an appearance by a representative, a party or intervenor will be deemed to appear for him or herself.

* * * * *

7. Section 2200.32 is revised to read as follows:

§ 2200.32 Signing of pleadings and motions.

Pleadings and motions shall be signed by the filing party or by the party's representative. The signature of a representative constitutes a representation by him that he is authorized to represent the party or parties on whose behalf the pleading is filed. The signature of a representative or party also constitutes a certificate by him that he has read the pleading, motion, or other paper, that to the best of his knowledge, information, and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion or other paper is signed in violation of this rule, such signing party or its representative shall be subject tot he sanctions set forth in § 2200.101 or § 2200.104. A signature by a party representative constitutes a representation by him that he understands that the rules and orders of the Commission and its judges apply equally to attorney and non-attorney representatives.

§ 2200.41 [Removed and Reserved]

8. Section 2200.41 is removed and reserved.

9. In § 2200.51, paragraph (a)(1) is revised to read as follows:

§ 2200.51 Prehearing conferences and orders.

(a) *Scheduling conference.* (1) The Judge may, upon his or her discretion, consult with all attorneys and any unrepresented parties, by a scheduling conference, telephone, mail, or other suitable means, and within 30 days after the filing of the answer, enter a scheduling order that limits the time:

(i) To join other parties and to amend the pleadings;

(ii) To file and hear motions; and

(iii) To complete discovery.

* * * * *

10. In § 2200.52, paragraphs (a)(1) and (d) through (1) are revised and a new paragraph (m) is added to read as follows:

§ 2200.52 General provisions governing discovery.

(a) *General.* (1) *Methods and limitations.* In conformity with these rules, any party may, without leave of the Commission or Judge, obtain discovery by one or more of the following methods: production of documents or things or permission to enter upon land or other property for inspection and other purposes (§ 2200.53); requests for admission to the extent provided in § 2200.54; and interrogatories to the extent provided in § 2200.55. Discovery is not available under these rules through depositions except to the extent provided in § 2200.56. In the absence of a specific provision, procedure shall be in accordance with the Federal Rules of Civil Procedure, except that the provisions of Rule 26(a) of the Federal Rules of Civil Procedure do not apply to Commission proceedings.

* * * * *

(d) *Privilege.* (1) *Claims of privilege.* A person claiming that information is privileged shall claim the privilege in writing or, if during a hearing, on the record. The claim shall: Identify the information that would be disclosed; set forth the privilege that is claimed; and allege the facts showing that the information is privileged. The claim shall be supported by affidavits, depositions, or testimony and shall specify the relief sought. The claim may be accompanied by a motion for a protective order or by a motion that the allegedly privileged information be received and the claim ruled upon in camera, that is with the record and hearing room closed to the public, or *ex parte,* that is, without the participation of parties and their representatives. The judge may enter an order and impose terms and conditions on his or her examination of the claim as justice may require, including an order designed to ensure that the alleged privileged information not be disclosed until after the examination is completed.

(2) *Deliberative process privilege.* A claim that the information sought is privileged because it is part of the ''deliberative process'' is subject to the same conditions as other claims of privilege as set out in paragraph (d)(1) of this section.

(3) *Upholding or rejecting claims of privilege.* If the judge upholds the claim of privilege, the judge may order and impose terms and conditions as justice may require, including a protective order. If the judge overrules the claim, the person claiming the privilege may obtain as of right an order sealing from the public those portions of the record containing the allegedly privileged information pending interlocutory or final review of the ruling, or final disposition of the case, by the Commission. Interlocutory review of such an order shall be given priority consideration by the Commission.

(e) *Protective orders.* In connection with any discovery procedures and where a showing of good cause has been made, the Commission or Judge may make any order including, but not limited to, one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the Commission or Judge;

(6) That a deposition after being sealed be opened only by order of the Commission or Judge;

(7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Commission or Judge.

(f) *Failure to cooperate; Sanctions.* A party may apply for an order compelling discovery when another party refuses or obstructs discovery. For purposes of this paragraph, an evasive or incomplete answer is to be treated as a failure to answer. If a Judge enters an order compelling discovery and there is a failure to comply with that order, the Judge may make such orders with regard to the failure as are just. The orders may issue upon the initiative of a Judge, after affording an opportunity to show cause why the order should not be entered, or upon the motion of a party. The orders may include any sanction stated in Fed.R.Civ.P.37, including the following:

(1) An order that designated facts shall be taken to be established for purposes of the case in accordance with the claim of the party obtaining that order;

(2) An order refusing to permit the disobedient party to support or to oppose designated claims or defenses, or prohibiting it from introducing designated matters in evidence;

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed; and

(4) An order dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

(g) *Unreasonable delays.* None of the discovery procedures set forth in these rules shall be sued in a manner or at a time which shall delay or impede the progress of the case toward hearing status or the hearing of the case on the date for which it is scheduled, unless, in the interests of justice the Judge shall order otherwise. Unreasonable delays in utilizing discovery procedures may result in termination of the party's right to conduct discovery.

(h) *Show cause orders.* All show cause orders issued by the Commission or Judge under paragraph (e) of this section shall be served upon the affected party by certified mail, return receipt requested.

(i) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement the response with respect to any question directly addressed to:

(i) The identity and location of persons having knowledge of discoverable matters; and

(ii) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which the person is expected to testify, and the substance of the person's testimony.

(2) A party is under a duty seasonably to amend a prior response if the party obtains information upon the basis of which:

(i) The party knows that the response was incorrect when made; or

(ii) The party knows that the response through correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the court, agreement of the parties, or at any time prior to the hearing through new requests for supplementation of prior responses.

(j) *Filing of discovery.* Requests for production or inspection under Rule 53, requests for admission under Rule 54 and responses thereto, interrogatories under Rule 55 and the answers thereto, and depositions under Rule 56 shall be served upon other counsel or parties, but shall not be filed with the Commission or the Judge. The party responsible for service of the discovery material shall retain the original and become the custodian.

(k) *Relief from discovery requests.* If relief is sought under Rules 101 or 52(e), (f), or (g) concerning any interrogatories, requests for production or inspection, requests for admissions, answers to interrogatories, or responses to request for admissions, copies of the portions of the interrogatories, requests, answers, or responses in dispute shall be filed with the Judge or Commission contemporaneously with any motion filed under Rules 101 or 52(e), (f), or (g).

(1) *Use at hearing.* If interrogatories, requests, answers, responses, or depositions are to be used at the hearing or are necessary to a prehearing motion which might result in a final order on any claim, the portions to be used shall be filed with the Judge or the Commission at the outset of the hearing or at the filing of the motion insofar as their use can be reasonably anticipated.

(m) *Use on review or appeal.* When documentation of discovery not previously in the record is needed for review or appeal purposes, upon an application and order of the Judge or Commission the necessary discovery papers shall be filed with the Executive Secretary of the Commission.

11. In § 2200.90, paragraph (b)(3) is revised to read as follows:

§ 2200.90 Decisions of Judges.

* * * * *

(b) * * *

(3) *Correction of errors; Relief from default.* Until the Judge's report has been directed for review or, in the absence of a direction for review, until the decision has become a final order, the Judge may correct clerical errors and errors arising through oversight or inadvertence in decisions, orders or other parts of the record. If a Judge's report has been directed for review, the decision may be corrected during the pendency of reviews with leave of the Commission. Until the Judge's report has been docketed by the Executive Secretary, the Judge may relieve a party of default or grant reinstatement under §§ 2200.101(b), 2200.52(f) or 2200.64(b).

* * * * *

12. In § 2200.95, paragraphs (a) and (i) are revised to read as follows:

§ 2200.95 Oral argument before the Commission.

(a) *When ordered.* Upon motion of any party, or upon its own motion, the Commission may order oral argument. Parties requesting oral argument must demonstrate why oral argument would facilitate resolutions of the issues before the Commission. Normally, motions for oral argument shall not be considered until after all briefs have been filed.

* * * * *

(i) *Recording oral argument.* (1) Unless the Commission directs otherwise, oral arguments shall be

electronically recorded and made part of the record. Any other sound recording in the hearing room is prohibited. Oral arguments shall also be transcribed verbatim. A copy of the transcript of the oral argument taken by a qualified court reporter, shall be filed with the Commission. The Commission shall bear all expenses for court reporters' fees and for copies of the hearing transcript received by it.

(2) Persons desiring to listen to the recordings shall make appropriate arrangements with the Executive Secretary. Any party desiring a written copy of the transcript is responsible for securing and paying for its coy.

(3) Error in the transcript of the oral argument may be corrected by the Commission on its own motion, or joint motion by the parties, or on motion by any party. The motion shall state the error in the transcript and the correction to be made. Corrections will be made by hand with pen and ink and by the appending of an errata sheet.

* * * * *

13. Section 2200.101 is revised to read as follows:

§ 2200.101 Failure to obey rules.

(a) *Sanctions.* When any party has failed to plead or otherwise proceed as provided by these rules or as required by the Commission or Judge, he may be declared to be in default either: On the initiative of the Commission or Judge, after having been afforded an opportunity to show cause why he should not be declared to be in default; or on the motion of a party. Thereafter, the Commission or Judge, in their discretion, may enter a decision against the defaulting party or strike any pleading or document not file din accordance with these rules.

(b) *Motion to set aside sanctions.* For reasons deemed sufficient by the Commission or Judge and upon motion expeditiously made, the Commission or Judge may set aside a sanction imposed under paragraph (a) of this section. See § 2200.90(b)(3).

(c) *Discovery sanctions.* This section does not apply to sanctions for failure to comply with orders compelling discovery, which are governed by § 2200.52(b).

(d) *Show cause orders.* All show cause orders issued by the Commission or Judge under paragraph (a) of this section shall be served upon the affected party by certified mail, return receipt requested.

14. In § 2200.120, paragraphs (a), (b), (d)(2) and (d)(3) and (g) are revised and a new paragraph (c)(6) is added to read as follows:

§ 2200.120 Settlement part.

(a) *Applicability.* (1) This section applies to:

(i) Notices of contest by employers in which the aggregate amount of the penalties sought by the Secretary is $100,000 or greater and notices of contest by employers which are determined to be suitable for assignment under this section for reasons deemed appropriate by the Chief Administrative Law Judge; (ii) Upon motion of any party following the docketing of the notice of contest, or otherwise with the consent of the parties at any time in the proceedings, the Chief Administrative Law Judge may assign a case to a Settlement Judge for processing under this section whenever it is determined that there is a reasonable prospect of substantial settlement with the assistance of mediation by a Settlement Judge.

(2) In the event either the Secretary or the employer objects to the use of a Settlement Judge procedure, such procedure shall not be imposed. This clause applies only to notices of contest by employers and to applications for fees under the Equal Access to Justice Act and 29 CFR Part 2204.

(b) *Proceedings under this part.* Notwithstanding any other provisions of these rules, upon completion of discovery the Chief Administrative Law Judge shall assign to the Settlement Part any case which satisfies the criteria set forth in paragraph (a)(1)(i) of this section. The Chief Administrative Law Judge may also assign to the Settlement Part, at any time during the proceeding, any case that satisfied the criteria set forth in paragraph (a)(1)(ii) of this section. The Chief Administrative Law Judge shall either act as or appoint a Settlement Part Judge, who shall be a Judge other than the one assigned to hear and decide the case (except as provided in paragraph (f)(2) of this section), to conduct proceedings under the Settlement Part as set forth in this section.

* * * * *

(c) * * *

(6) *Mini-Hearing.* Where the Settlement Judge finds that it may help narrow the issues, he or she may order the parties to participate in a mini-hearing. The confidentiality rules of paragraph (d)(3) of this section shall apply to the mini-hearing.

(d) * * *

(2) *Participation in conference.* The Settlement Part Judge may require that any attorney or other representative who is expected to try the case for each party by present. The Settlement Part Judge may also require that the party's representative be accompanied by an official of the party having full settlement authority on behalf of the party. The parties and their representatives or attorneys are expected to be completely candid with the Settlement Part Judge so that he may properly guide settlement discussions. The failure to be present at a settlement conference or otherwise to comply with the orders of the Settlement Part Judge or the refusal to cooperate fully within the spirit of this rule may result in the imposition of sanctions under § 2200.101.

(3) *Confidentiality.* All statements made, and all information presented, during the course of proceedings under this section shall be regarded as confidential and shall not be divulged outside of these proceedings except with the consent of the parties. The Settlement Part Judge shall if necessary issue appropriate orders in accordance with § 2200.52(e) to protect confidentiality. The Settlement Part Judge shall not divulge any statements or information presented during private negotiations with a party or his representative except with the consent of that party. No evidence of statements or conduct in proceedings under this section within the scope of Federal Rule of Evidence 408, no notes or other material prepared by or maintained by the Settlement Part Judge, and no communications between the Settlement Part Judge and the Chief Administrative Law Judge including the report of the Settlement Part Judge under paragraph (f) of this section, will be admissible in any subsequent hearing except by stipulation of the parties. Documents disclosed in the settlement process may not be used in litigation unless obtained through appropriate discovery or subpoena. The Settlement Part Judge shall not discuss the merits of the case with any other person, nor appear as a witness in any hearing of the case.

* * * * *

(g) *Report of Settlement Part Judge.* (1) The Settlement Part Judge shall promptly notify the Chief Administrative Law Judge in writing of the status of the case at such time that he determines further negotiations would be fruitless. If the Settlement Part Judge has not made such a determination and a settlement agreement is not achieved within 120 days following assignment of the case to the Settlement Part Judge, the Settlement Part Judge shall then advise the Chief Administrative Law Judge in writing of his assessment of the likelihood that the parties could come to

a settlement agreement if they were afforded additional time for settlement discussions and negotiations. The Chief Administrative Law Judge may then in his discretion allow an additional period of time, not to exceed 30 days, for further proceedings under this section. If at the expiration of the period allotted under this paragraph the Settlement Part Judge has not approved a full settlement pursuant to § 2200.100, he shall furnish to the Chief Administrative Law Judge copies of any written stipulations and orders embodying the terms of any partial settlement the parties have reached.

(2) At the termination of the settlement period without a full settlement, the Chief Administrative Law Judge shall promptly assign the case to an Administrative Law Judge other than the Settlement Part Judge or Chief Administrative Law Judge for appropriate action on the remaining issues. If all the parties, the Settlement Judge and the Chief Administrative Law Judge agree, the Settlement Part Judge may be retained as the hearing judge.

Subpart M—Amended

15. In Subpart M all references to ''E–Z Trial'' are revise to read ''Simplified Proceedings''

16. In § 2200.202, paragraphs (a)(2) and (b) are revised to read as follows:

§ 2200.202 Eligibility for Simplified Proceedings.

(a) * * *

(2) an aggregate proposed penalty of not more than $20,000,

* * * * *

(b) Those cases with an aggregate proposed penalty of more than $20,000, but not more than $30,000, if otherwise appropriate, may be selected for Simplified Proceedings at the discretion of the Chief Administrative Law Judge.

PART 2204—[AMENDED]

17. The authority citation for part 2204 continues to read as follows:

Authority: Sec. 203(a)(1), Pub. L. 96–481, 94 Stat. 2325 (5 U.S.C. 504(c)(1)); Pub. L. 99–80, 99 Stat. 183.

§ 2204.105 [Amended]

18. In § 2204.105, paragraph (f) is removed.

19. Section 2204.302 is amended by revising paragraph (a) and removing paragraph (d):

§ 2204.302 When an application may be filed.

(a) An application may be filed whenever an applicant has prevailed in a proceeding or in a discrete substantive portion of the proceeding, but in no case later than thirty days after the period for seeking review in a court of appeals expires.

* * * * *

Dated: March 1, 2005.

Patrick Moran,

Deputy General Counsel.

[FR Doc. 05–4257 Filed 3–3–05; 8:45 am]

BILLING CODE 7600–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[R03–OAR–2005–PA–0001; FRL–7880–5]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Commonwealth of Pennsylvania; Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve delegation of the Federal plan for commercial and industrial solid waste incinerator (CISWI) units to both the Pennsylvania Department of Environmental Protection (PADEP) and the Allegheny County Health Department (ACHD). In the ''Rules and Regulations'' section of the **Federal Register**, EPA is announcing its approval of the requests for delegation of the Federal plan without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The 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.

DATES: Comments must be received in writing by April 4, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–PA–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: *http://wilkie.walter@epa.gov*.

D. Mail: R03–OAR–2005–PA–0001, Walter Wilkie, Chief, Air Quality Analysis, Mailcode 3AP22, 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–2005–PA–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 PADEP submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105. Copies of the ACHD submittal are available at the Allegheny County Health Department, 3333 Forbes Avenue, Pittsburgh, Pennsylvania 15213.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, P.E., at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, 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. 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: February 17, 2005.

Richard Kampf,

Acting Regional Administrator, Region III.

[FR Doc. 05–4270 Filed 3–3–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–P–7671]

Proposed Flood Elevation Determinations

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

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed 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.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and record keeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 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.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	Depth in feet above ground ♦Elevation in feet (NAVD)	
				Existing	Modified
NM	Espanola (City) Rio Arriba and Santa Fe Counties.	Arroya del Gaucho	At the confluence with the Rio Grande	None	♦5,602
			Approximately 2.04 miles upstream of U.S. Highway 84.	None	♦5,918
		Arroyo de Guachupangue	Approximately 500 feet upstream of the confluence with the Rio Grande.	None	♦5,585
			Approximately 2,690 feet upstream of the confluence of Arroyo de Guachupangue Tributary.	None	♦5,683
		Arroyo de Guachupangue Tributary.	At the confluence with Arroyo de Guachupangue.	None	♦5,632
			Approximately 500 feet upstream of the confluence with Arroyo de Guachupangue.	None	♦5,642
		Arroyo de Hanchitos	Approximately 2,690 feet downstream of U.S. Highway 285.	None	♦5,607
			Approximately 1,650 feet upstream of U.S. Highway 285.	None	♦5,680
		Llano Ditch Tributary	Approximately 250 feet upstream of El Llano Road.	None	♦5,599
			Approximately 1.3 miles upstream of El Llano Road.	None	♦5,705
TX	Espanola (City) Rio Arriba and Santa Fe Counties (Cont'd.).	Rio Grande	Approximately 1,650 feet downstream of U.S. Highway 84.	None	♦5,581
			Approximately 0.82 mile upstream of the confluence of Arroyo del Gaucho.	None	♦5,607
		Rio Grande Tributary 1	At North Railroad Avenue	None	♦5,595
			Approximately 1,930 feet upstream of Onate Street.	None	♦5,673
		Santa Cruz River	At the confluence with the Rio Grande	None	♦5,586
			Approximately 1,170 feet upstream of State Highway 106.	None	♦5,692

Maps are available for inspection at the Community Map Repository, City of Espanola, 405 North Paseo de Onate, Espanola, New Mexico.
Send comments to The Honorable Richard Lucero, Mayor, City of Espanola, 405 North Paseo de Onate, Espanola, New Mexico 87532.

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

Dated: February 23, 2005.

David I. Maurstad,

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

[FR Doc. 05–4196 Filed 3–3–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–P–7673]

Proposed Flood Elevation Determinations

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

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR

60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed 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.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 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.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding	Location of referenced elevation	♦Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Colorado River	Approximately 4.92 miles downstream of the confluence of JD Creek.	None	♦297	Bastrop County (Unincorporated Areas), City of Bastrop, City of Smithville.
	Approximately 3.43 miles upstream of the confluence of Dry Creek.	None	♦391	
Gills Branch	At the confluence with the Colorado River.	♦353	♦352	Bastrop County (Unincorporated Areas), City of Bastrop.
	Approximately 230 feet downstream of State Route 71.	♦353	♦352	

Unincorporated areas of Bastrop County, Texas:

Maps are available for inspection at 806 Water Street, Bastrop, Texas.

Send comments to The Honorable Ronnie McDonald, Bastrop County Judge, 804 Pecan Street, Bastrop, Texas 78602.

City of Bastrop, Bastrop County, Texas:

Maps are available for inspection at 300 Water Street, Bastrop, Texas.

Send comments to The Honorable Tom Scott, Mayor, City of Bastrop, Post Office Box 427, Bastrop, Texas 78602.

City of Smithville, Bastrop County, Texas:

Maps are available for inspection at 1000 Martin Luther King Boulevard, Smithville, Texas.

Send comments to The Honorable Renee Blaschke, Mayor, City of Smithville, Post Office Box 449, Smithville, Texas 78957–0449.

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

Dated: February 23, 2005.

David I. Maurstad,

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

[FR Doc. 05–4188 Filed 3–3–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050216041–5041–01; I.D. 020705C]

RIN 0648–AS87

Fisheries of the Northeastern United States; Recordkeeping and Reporting Requirements; Regulatory Amendment to Modify Seafood Dealer Reporting Requirements

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes measures to modify the existing reporting and record keeping regulations for federally permitted seafood dealers participating in the summer flounder, scup, black sea bass, Atlantic sea scallop, Northeast (NE) multispecies, monkfish, Atlantic mackerel, squid, butterfish, Atlantic surfclam, ocean quahog, Atlantic herring, Atlantic deep-sea red crab, tilefish, Atlantic bluefish, skate, and/or spiny dogfish fisheries in the NE Region. The purpose of this action is to reduce the reporting burden on seafood dealers, improve data quality, simplify compliance, enhance enforceability, and clarify existing requirements.

DATES: Comments on this proposed rule must be received on or before March 21, 2005.

ADDRESSES: Copies of the regulatory amendment, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and other supporting materials are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester MA 01930. The regulatory amendment/RIR/IRFA is also accessible via the Internet at *http://www.nero.nmfs.gov*. Comments on the rule or related analysis should be submitted as follows:

- E-mail comments to DealerER@noaa.gov. Mark the subject line ''Comments on Dealer Reporting.''
- Send or deliver written comments (paper, CD Rom, or disk) to Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester MA 01930. Mark the outside of the envelope, ''Comments on Proposed Rule to Modify Dealer Reporting.''
- Send comments through the Federal e-Rulemaking Portal at *www.Regulations.gov*
- Fax comments via facsimile to (978) 281–9161

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Patricia A. Kurkul, Regional Administrator, and by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Kelley McGrath, Fishery Information Specialist, (978) 281–9307, fax (978) 281–9161, or Erik Braun, Fishery Reporting Specialist, (631)-324–3569, fax (631)324–3314.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the fishery management plans (FMPs) for the summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, monkfish, Atlantic mackerel, squid, butterfish, Atlantic surfclam, ocean quahog, Atlantic herring, Atlantic deep-sea red crab, tilefish, Atlantic bluefish, skate, and spiny dogfish fisheries are found at 50 CFR part 648. These FMPs were prepared under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). All dealers and vessels issued a Federal permit in one or more of the aforementioned fisheries must comply with the reporting requirements outlined at § 648.7. Lobster dealers issued a Federal lobster permit, but not issued any of the permits with mandatory reporting requirements under this part, are not required to comply with these reporting regulations, although other reporting requirements may apply.

Prior to March 1994, nearly all fisheries landing information was collected from seafood dealers and vessel owners on a voluntary basis. Vessel owners/operators were asked by NMFS Field Staff to respond voluntarily to interview questions regarding effort and location information for their fishing trip, which were used to augment the detailed purchase reports submitted by dealers. In 1994, mandatory reporting by seafood dealers and vessel owners/operators permitted in the summer flounder, Atlantic sea scallop and NE multispecies fisheries was implemented. As subsequent FMPs for additional fisheries were developed, including several managed, in part, by harvest limits, mandatory reporting by dealers and vessels became an integral part of those FMPs. Any dealer issued a permit for a species with mandatory reporting requirements was required to submit trip-level purchase reports on a weekly basis, either on paper or in an approved electronic format. If no purchases were made during a calendar month, a negative report so stating was required. Dealers were also required to submit weekly summary reports of certain quota-managed species through the telephone-based Interactive Voice Response (IVR) system. If no purchases of any quota-managed species were made during the reporting week, a negative report was required.

NMFS published a final rule (69 FR 13482, March 23, 2004) that was effective May 1, 2004. It implemented new reporting regulations requiring seafood dealers permitted in the summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, monkfish, Atlantic mackerel, squid, butterfish, Atlantic surfclam, ocean quahog, Atlantic herring, Atlantic deep-sea red crab, tilefish, Atlantic bluefish, skate, and/or spiny dogfish fisheries to submit electronically trip-level reports, of all fish purchased or received, regardless of species, area harvested, point of purchase, or point of landing. Electronic reports must be submitted to NMFS using one of four acceptable methods: data entry via a web-based form; file upload via a web site; file upload using an approved state management agency program; or file transfer protocol (FTP) via the phone line.

Reports are required to be submitted either on a weekly or a daily basis, depending on the dealer category. Each dealer is currently assigned to either the Small Dealer or Large Dealer category, based on past ex-vessel purchase value. Any dealer with less than $300,000 in total ex-vessel purchases in each year from 2000 through 2002 is considered a Small Dealer and must report trip-level purchase reports each week. Reports are due within 3 days of the end of the reporting week, by midnight Tuesday. Any dealer with at least $300,000 in ex-vessel purchases in 2000, 2001, or 2002 is considered a Large Dealer and must submit trip-level purchase reports by midnight of the following business day. Any dealer issued a new permit in 2003

or after is considered a Large Dealer and subject to the reporting requirements for large dealers. Effective May 1, 2005, all dealers are required to submit reports by midnight of the following business day, regardless of their category. If no fish are purchased or received during a day, no report is required to be submitted. If no fish are purchased or received during an entire reporting week, a report so stating must be submitted.

All dealers issued a dealer permit under 50 CFR part 648 must provide the following information on each report: Dealer name; dealer permit number; name and permit number or name and hull number (United States Coast Guard documentation number or state registration number, whichever is applicable) of vessel(s) from which fish are purchased or received; trip identifier for each trip from which fish are purchased or received from a commercial fishing vessel permitted under this part; date(s) of purchases and receipts; pounds by species (by market category, if applicable, or, if a surfclam or ocean quahog processor or dealer, the number of bushels by species); price per pound by species (by market category, if applicable, or, if a surfclam or ocean quahog processor or dealer, the price per bushel by species) or total value by species (by market category, if applicable); port landed; cage tag numbers (if a surfclam or ocean quahog processor or dealer); disposition of the seafood product; and any other information deemed necessary by the Regional Administrator. Certain information, such as price, disposition, and trip identifier may be submitted up to 16 days after the end of the reporting week, or by the end of the calendar month, whichever is later. Effective May 1, 2005, trip identifier will be due within the same time frame as the original report, i.e., by midnight of the following business day.

The implementation of mandatory electronic reporting for federally permitted dealers represented a marked change in the methods used by both industry and NMFS to conduct business and data management. Since the implementation of electronic reporting, NMFS has reviewed and evaluated the new reporting requirements, data quality, dealer compliance, and submission methods, seeking ways to minimize the reporting burden for dealers while maintaining effective fisheries management. NMFS staff continues to work with industry to identify and to resolve technical issues and get feedback on electronic reporting. As a result of its findings, NMFS proposes modifying several components of dealer reporting to reduce the burden on seafood dealers, improve data quality, simplify compliance, enhance enforceability, and clarify existing requirements. The three major areas of proposed changes are related to reporting frequency, out-of-region purchases, and inshore species reporting. In addition to dealer reporting changes, NMFS proposes to modify the requirements for operator permits required under this part, in order to accept operator permits issued by the Southeast (SE) Region under 50 CFR part 622 as compliant with the operator permit requirements in 50 CFR part 648.

Frequency of Reporting

The current regulations require dealers in the Large Dealer category, and all dealers as of May 1, 2005, to report daily, regardless of the landing levels for a given species. Throughout most of the year, NMFS monitors landings of species managed by quota or other harvest limit on a weekly basis. While weekly monitoring is sufficient for most species, most of the year, more frequent reporting is beneficial as landings of a species reach levels that would cause the applicable quota or other target exploitation rate specified in the FMP for that species to be achieved. However, NMFS acknowledges that at the present time, compliance with daily reporting requirements can be difficult for dealers to achieve, primarily due to the limited window of time in which reports may be submitted. It is also more cumbersome for NMFS to manage the data and monitor compliance when data are received, or supposed to be received, from all dealers on a year-round, daily basis. Therefore, to alleviate the burden on both the industry and the Government, NMFS proposes to require weekly reporting by all dealers.

Under the proposed regulations, dealers would be required to submit electronic trip level reports of all fish purchases and receipts to NMFS on a weekly basis. Consistent with the current regulations, weekly reports would be due within 3 days of the end of the reporting week, by midnight Tuesday. If no purchases or receipts are made during the entire reporting week, an electronic report so stating would be required.

Out-of-Region Dealers

The current reporting requirements are very inclusive, in that any dealer issued a permit under this part must report all fish purchases, regardless of dealer location, point of landing, or point of purchase, to NMFS NE Region. This means that dealers conducting business outside of the NE Region (Maine to North Carolina), must still report all fish purchases and receipts, including species not managed by the NE Region, or even by NMFS. Many of these dealers are required to report their purchases of certain species to another NMFS Region or state agency as well, resulting in duplicate reporting of some purchases. Reporting the same information twice is burdensome to dealers and more difficult for NMFS to manage. It may also lower the overall quality of fisheries landings data if not all of the duplicate reports can be identified and removed from the database. Therefore, NMFS proposes to require dealers making purchases from a vessel that landed fish outside of the NE Region to report only the species. Limiting the species that must be reported by dealers making out-of-region purchases would reduce the burden on those dealers and lessen duplicate reporting to Federal and state agencies. Requiring only those species managed by the NE Region to be reported for out-of-region trips still allows for effective monitoring of species for which the NE Region is responsible, while minimizing the reporting burden on dealers.

Inshore Species Reporting

Similar to the out-of-region purchases situation, under the current regulations dealers must report all purchases to NMFS, including shellfish and other invertebrate species caught in waters under the states' jurisdiction (inshore) that are not currently managed by NMFS and are not anticipated to be managed by NMFS in the future. In many cases these purchases are being reported to a state management agency as well, resulting in duplicate data and unnecessary burden on seafood dealers. Therefore, NMFS proposes to exclude several inshore species from dealer reporting requirements under this part. The exclusion would be accomplished by adding a definition for Inshore Exempted Species to the Definitions section of this part. Excluded species include bay scallops; blood arc, razor and soft clams; blood and sand worms; blue, green, hermit, Japanese shore, and spider crabs; blue mussels; and quahogs.

Atlantic Bluefin Tuna

To purchase Atlantic bluefin tuna, dealers must comply with Highly Migratory Species (HMS) requirements under 50 CFR part 635, including the requirement to submit purchase reports to the HMS division of NMFS. If a dealer is also issued a permit under 50 CFR part 648, that dealer is required to report Atlantic bluefin tuna purchases to NMFS twice. This results in an increased burden for dealers as they are

reporting the same purchase under two different agency requirements. Therefore, NMFS proposes eliminating the requirement for dealers to report purchases or Atlantic bluefin tuna under 50 CFR part 648. Other HMS reporting requirements would still apply.

File Transfer Protocol (FTP) Option

One of the four acceptable options for submitting electronic reports is via a phone-line FTP. The intent of providing this option was to allow dealers without Internet access to submit files using a phone line rather than via a web site. According to current NOAA policy outlined in the DOC's ''Unclassified System Remote Access Security Policy and Minimum Implementation Standards'' document, FTP sites are no longer an acceptable system of file transfer due to security concerns. Therefore to comply with NOAA policy, NMFS proposes removing the option to submit data via FTP.

Units of Measure

The current regulations provide that dealers must report purchases in pounds, except for surfclam and ocean quahog processors and dealers, who must provide the bushels purchased. This phrasing implies that surfclam and ocean quahog dealers must report all purchases in bushels, however the intention was for surfclams and ocean quahogs to be reported in bushels and other species to be reported in pounds. Further, certain species may be landed in units of measure other than pounds or bushels. For instance, scallops may be reported in gallons and ocean quahogs may be reported in bags. The online data entry system that many dealers use to submit data to NMFS contains additional units of measure as well. However, the current wording in the regulations restricts the types of units that may be reported to pounds and bushels. NMFS proposes modifying the current language to allow other units of measure to be reported by seafood dealers.

Cage Tag Numbers

The current regulations require that cage tag numbers must be reported for all purchases made by surfclam or ocean quahog dealers. However, only surfclam and ocean quahog trips harvested under an Individual Transferrable Quota (ITQ) actually require cage tags to be used. Purchases of surfclams and ocean quahogs from non-ITQ trips do not require tags, nor do other species purchased by surfclam and ocean quahog dealers. NMFS proposes modifying the current regulations to clarify that cage tags must be reported only for purchases from certain trips.

Price, Disposition and Trip Identifier

Under the current regulations, dealers may submit price, disposition, and trip identifier information up to 16 days after the end of the reporting week, or by the end of the calendar month, whichever is later. The purpose of the extended time frame is to allow for the lag between the time the fish was purchased and the time that information becomes available to the dealer. However, NMFS has determined that 16 days is a sufficient amount of time for dealers to compile and submit price and disposition information. Prior to the implementation of electronic reporting, price information was due within 16 days of the end of the reporting week. This schedule gave dealers the time they needed to collect the information and still enabled NMFS to provide economic data for analyses within a reasonable time frame. Therefore, as of May 1, 2005 NMFS proposes to allow dealers 16 days to report price and disposition information. As specified in the current regulations, effective May 1, 2005, trip identifier will be due within the same time frame as the initial report.

At-sea Receivers

The existing regulations for at-sea purchasers, receivers or processors state that ''All persons, except persons on Atlantic herring carrier vessels, purchasing, receiving, or processing any Atlantic herring, summer flounder, Atlantic mackerel, squid, butterfish, scup, or black sea bass at sea for landing at any port of the United States must submit information identical to that required by paragraph (a)(1) of this section and provide those reports to the Regional Administrator or designee by the same mechanism and on the same frequency basis.'' Requiring fish received, but not purchased, to be reported is likely to result in duplicate or triplicate reporting of fish transferred at sea. For example, if an at-sea purchaser reports their purchases, then transfers that same product to an at-sea receiver who also reports it, the result is duplicate data being reported. This requires more intensive data management and auditing procedures, and increases the likelihood of duplicate data in the database. This is especially important for species managed by quota or other harvest limit, in which duplicate data could result in an early closure of the fishery. NMFS proposes to remove the term ''receiving,'' which would reduce the likelihood of double reporting.

Computer Acquisition Requirement

The current regulations require dealers to obtain and utilize a personal computer to comply with the reporting requirements. This wording may imply that dealers must obtain their own computer in order to comply, thus excluding them from using a computer owned by others. This was not the intention of the regulation. Dealers may use any computer that meets the system requirements. In addition, NMFS has established kiosks in several field offices specifically for dealers to use to meet their reporting requirements. NMFS proposes to change this wording to indicate that dealers do not have to own the computer used for submitting reports to NMFS.

Annual Processed Products Report (APPR)

Current regulations require any dealer issued a Federal permit under this part to complete and submit all sections of the APPR. The APPR is a census used to collect employment and economic data for the processing segment of the seafood industry. Certain fisheries, such as surfclam, ocean quahog, and Atlantic mackerel, require processors to be issued a processor permit under this part. Most entities issued a processor permit are also issued a dealer permit, however, there may be some processors issued only a processor permit under this part. The current regulations specify that Federal dealers must submit the APPR, inadvertently excluding processors from that requirement. Therefore, NMFS proposes modifying the language to clarify that both dealers and processors must submit the APPR.

Operator Permits

The current regulations specify that an operator must have been issued an operator permit under 50 CFR part 697. To provide a reciprocal agreement with the SE Region, NMFS proposes to modify the current regulations to allow operator permits issued pursuant to part 622 of this chapter to satisfy permitting requirements under this part.

Classification

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

NMFS prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA), that describes the economic impacts this proposed rule would have, if adopted, on small entities. A description of the action, why it is being considered, and the legal basis for the action, are contained in the preamble to this proposed rule and in the **SUMMARY**. This rule does not

duplicate, overlap, or conflict with any relevant Federal rules. All of the dealers (approximately 576) that would be impacted by this proposed rule making are considered to be small entities; therefore, there would be no disproportionate impacts between large and small entities.

This proposed rule would reduce the reporting burden on seafood dealers by reducing the frequency of reporting, eliminating certain species from the current reporting requirements, reducing the frequency of reporting, and minimizing duplicate reporting. Therefore, this rule would: Not result in a decrease in annual gross revenues; not increase production costs; not increase compliance costs; and not force any businesses to cease operations.

In addition to the proposed action, and a No Action alternative, NMFS considered additional options for each of the three major facets of this proposed rule: Reporting frequency, out-of-region purchases, and inshore species reporting. For reporting frequency NMFS considered two additional options. The first option redefined the dealer categories based on purchases of quota-managed species only, rather than total purchases as is currently the case. Under this option Small Dealers would continue to report weekly and Large Dealers would continue to report daily. The second option considered for reporting frequency required weekly reporting for all dealers, with an option for NMFS to implement daily reporting if landings of a species reached levels requiring daily reporting for effective quota monitoring. Both of these options would reduce the reporting frequency, and thus the cost of compliance, for most dealers. While the dealers still required to report daily under the first option would not see a cost savings, the cost would not increase for any dealers under that option. Under the second option, all dealers would see a cost benefit unless and until daily reporting was implemented, at which time the cost of compliance would temporarily increase for some dealers, to the same level as under the current regulations. The proposed alternative would be most beneficial to dealers in that it would reduce the cost of compliance for all dealers throughout the year.

For out-of-region dealer reporting NMFS considered two other options for determining what constitutes an out-of-region dealer or trip. In the first option, the primary business address of the dealer determined whether the dealer was out-of-region or not. In the second option, the determination was based on the point of purchase for the trip. In addition, NMFS considered two other options for relieving dealers of inshore species reporting requirements. One option considered employing dealer-by-dealer reporting exemptions for any non-federally-managed species, if requested by the state agency for that dealer. The second option allowed for a state agency to request that NMFS relieve all dealers in their state from reporting species to NMFS that are also reported to the state agency, regardless of the management agency. For both out-of-region purchases and inshore species reporting, the differences in cost savings among the two options and the preferred alternatives are negligible because it is likely that the number of dealers affected under each option is very similar. However, both the options and the preferred alternatives would result in a time and cost savings compared to the current regulations, due to the reduction in reporting requirements.

For all other proposed changes included in this proposed rule, only the No Action and proposed action alternatives were considered. Of these proposed changes, only the elimination of Atlantic bluefin tuna reporting under 50 CFR part 648, removing the option for a dealer to submit reports via FTP, and alleviating at-sea receivers from reporting requirements may have an economic effect on dealers. The elimination of Atlantic bluefin tuna reporting requirements for dealers issued a permit under 50 CFR part 648 would result in a slight time saving for dealers issued an Atlantic bluefin tuna permit since they would no longer have to report their Atlantic bluefin tuna purchases under two sets of regulations. Removing the option to submit reports via a phone line FTP would require all dealers to have Internet access which could, theoretically, result in a small cost increase to certain dealers. However, since no dealers are currently using the FTP option, no dealers would actually be affected by this change. Alleviating at-sea receivers from submitting purchase reports may save a very small number of entities from reporting under 50 CFR part 648.

The remaining proposed changes are primarily clarifications or administrative changes that would not result in any economic impacts on the affected entities. These proposed changes include allowing various units of measure to be reported; requiring the trip identifier and disposition to be reported within 16 days of the end of the reporting week; clarifying which trips require cage tag numbers to be reported; eliminating at-sea receivers from reporting requirements; clarifying that dealers do not have to purchase their own computer to comply with these reporting requirements; and, allowing operator permits issued by the Southeast Region to satisfy operator permit requirements under 50 CFR part 648. Detailed descriptions of each of the proposed changes are provided in the associated RIR/IRFA document.

Collection-of-Information Requirements

This proposed rule contains a collection-of-information requirement, which has been submitted to OMB for approval. The public's reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

The revised reporting requirements and the estimated time for a response are as follows: 4 minutes for a dealer purchase report.

Public comment is sought regarding: 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; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see **ADDRESSES**).

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.

This proposed rule follows the final rule implementing electronic reporting requirements for seafood dealers, effective May 1, 2004 (69 FR 13482, March 23, 2004) and addresses several of the concerns raised by industry to NMFS since then. NMFS anticipates that this proposed rule would result in only a benefit to industry by reducing the reporting burden, minimizing duplicate reporting, and simplifying compliance. Therefore, because this proposed rule is not expected to result in any negative impacts on the business entities that will be affected, and its earliest implementation is in the best interest of these entities, the comment period is specified to be 15 days.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 25, 2005.

William T. Hogarth,

Assistant Administrator for Fisheries, Natioinal Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. Section 648.2 is amended by adding, in alphabetical order, a new definition for ''Inshore Exempted Species''; and removing the definitions for ''Dealer-large'' and ''Dealer-small'' to read as follows:

§ 648.2 Definitions.

* * * * *

Inshore Exempted Species means the following species:

Bay scallop - *Aequipecten irradians*.

Blood arc clam - *Anadara ovalis*.

Blood worm - *Glycera dibranchiata*.

Blue crab - *Callinectes similis and Callinectes sapidus*.

Blue mussel - *Mytilus edulis*.

Green crab - *Carcinus maenas*.

Hermit crab - *Clibanarius vittatus, Pagurus pollicaris and Pagurus longicarpus*.

Japanese shore crab - *Hemigrapsus sanguineus*.

Oyster - *Crassostrea virginica and Ostrea edulis*.

Quahog - *Mercenaria mercenaria*.

Razor clam - *Ensis directus*.

Sand worm - *Neresis virens*.

Soft clam - *Mya arenaria*.

Spider crab - *Libinia emarginata*.

* * * * *

3. In § 648.5, paragraph (a) is revised to read as follows:

§ 648.5 Operator permits.

(a) *General.* Any operator of a vessel fishing for or possessing Atlantic sea scallops in excess of 40 lb (18.1 kg), NE multispecies, spiny dogfish, monkfish, Atlantic herring, Atlantic surfclam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, black sea bass, or Atlantic bluefish, harvested in or from the EEZ; tilefish harvested in or from the EEZ portion of the Tilefish Management Unit; skates harvested in or from the EEZ portion of the Skate Management Unit; or Atlantic deep-sea red crab harvested in or from the EEZ portion of the Red Crab Management Unit, issued a permit, including carrier and processing permits, for these species under this part, must have been issued under this section, and carry on board, a valid operator permit. An operator's permit issued pursuant to 50 CFR part 697 or part 622 satisfies the permitting requirement of this section. This requirement does not apply to operators of recreational vessels.

* * * * *

4. In § 648.7, paragraph (f)(1)(ii) is removed and reserved; paragraphs (a)(1)(i), (a)(2), (a)(3) introductory text, (a)(3)(i), (f)(1)(i) introductory text, (f)(1)(iv), (f)(1)(v), and (f)(3) are revised, and paragraph (a)(1)(ii) is added to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

(a) * * *

(1) * * *

(i) All dealers issued a dealer permit under this part must provide: Dealer name; dealer permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessel(s) from which fish are purchased or received; trip identifier for each trip from which fish are purchased or received from a commercial fishing vessel permitted under this part; date(s) of purchases and receipts; units of measure and amount by species (by market category, if applicable); price per unit by species (by market category, if applicable) or total value by species (by market category, if applicable); port landed; cage tag numbers for surfclams and ocean quahogs, if applicable; disposition of the seafood product; and any other information deemed necessary by the Regional Administrator. If no fish are purchased or received during a reporting week, a report so stating must be submitted.

(ii) *Exceptions.* The following exceptions apply to reporting requirements for dealers permitted under this part:

(A) Inshore Exempted Species, as defined in § 648.2, are not required to be reported under this part.

(B) When purchasing fish from a vessel landing in a port located outside of the Northeast Region (Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia and North Carolina), only purchases of species managed by the Northeast Region under this part, and lobster, managed under 50 CFR part 697, must be reported. Other reporting requirements may apply to those species not managed by the Northeast Region, which are not affected by this provision.

(C) Dealers issued a permit for Atlantic bluefin tuna under 50 CFR part 635 are not required to report their purchases of Atlantic bluefin tuna under this part. Other reporting requirements, as specified in 50 CFR 635.5, apply to Atlantic bluefin tuna purchases.

* * * * *

(2) *System requirements.* All persons required to submit reports under paragraph (a)(1) of this section are required to have the capability to transmit data via the Internet. To ensure compatibility with the reporting system and database, dealers are required to utilize a personal computer, in working condition, that meets the minimum specifications identified by NMFS. The affected public will be notified of the minimum specifications via a letter to all Federal dealer permit holders.

(3) *Annual report.* All persons issued a permit under this part are required to submit the following information on an annual basis, on forms supplied by the Regional Administrator:

(i) All dealers and processors issued a permit under this part must complete all sections of the Annual Processed Products Report for all species that were processed during the previous year. Reports must be submitted to the address supplied by the Regional Administrator.

* * * * *

(f) *Submitting reports*—(1) *Dealer or processor reports.* (i) Weekly detailed trip reports. Detailed trip reports required by paragraph (a)(1)(i) of this section must be received within 3 days after the end of the reporting week, by midnight of the following Tuesday. If no fish are purchased or received during a reporting week, the report so stating required under paragraph (a)(1)(i) of this section must be received within 3 days after the end of the reporting week, by midnight on the following Tuesday.

(ii) [Reserved]

* * * * *

(iv) Through April 30, 2005, to accommodate the potential lag in availability of some required data, the trip identifier, price and disposition information required under paragraph (a)(1) of this section may be submitted after the weekly dealer report, but must be received within 16 days of the end of the reporting week or the end of the calendar month, whichever is later. Dealers will be able to access and update previously submitted trip identifier, price, and disposition data.

(v) Effective May 1, 2005, the trip identifier required under paragraph (a)(1) must be submitted with the weekly dealer purchase report, as required under paragraphs (f)(1)(i) of

this section. Price and disposition information may be submitted after the weekly dealer report, but must be received within 16 days of the end of the reporting week.

* * * * *

(3) *At-sea purchasers and processors.* The owner or operator of all vessels, except the owner or operator of an Atlantic herring carrier vessel, purchasing or processing any Atlantic herring, summer flounder, Atlantic mackerel, squid, butterfish, scup, or black sea bass at sea for landing at any port of the United States must submit information identical to that required by paragraph (a)(1) of this section and provide those reports to the Regional Administrator or designee by the same mechanism and on the same frequency basis.

* * * * *

[FR Doc. 05–4145 Filed 3–3–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 70, No. 42
Friday, March 4, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 28, 2005.

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, Pub. L. 104–13. Comments regarding (a) Whether the collection for 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 methology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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.

Natural Resource Conservation Service

Title: Emergency Watershed Protection Program Recovery.

OMB Control Number: 0578–0030.

Summary of Collection: The Emergency Watershed Protection (EWP) Program regulations at 7 CFR 624 set forth the basic policies, program provisions, and eligibility requirements for sponsors to participate in the EWP program. The Natural Resource Conservation Service (NRCS) is responsible for administration of EWP Program. EWP assistance is provided to sponsors to undertake emergency measures for runoff retardation and soil erosion prevention to safeguard lives and property from floods, drought, and the products of erosion on any watershed whenever fire, flood, or any other natural disaster occurrence is causing or has cause a sudden impairment of that watershed. The sponsor's request is submitted formally as a letter (NRCS–PDM–20A) to the NRCS State Conservationist for consideration and the NRCS–PDM–20, Damage Survey Report (DSR) is the agency decision-making document that includes the economic, social, and environmental evaluation, as well as the engineer's cost estimate.

Need and Use of the Information: The collected information allows the responsible federal official to make EWP eligibility determinations and provide federal cost-share payments to the sponsors. Without the information NRCS would not be able to implement the program.

Description of Respondents: State, Local, or Tribal Government; Farms; Individuals or households.

Number of Respondents: 360.

Frequency of Responses: Reporting: Other (Disaster Occurrence).

Total Burden Hours: 4,770.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–4163 Filed 3–3–05; 8:45 am]

BILLING CODE 3410–16–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 February 1, 2005, by Gollott's Oil Dock and Icehouse, Inc., Biloxi, Mississippi. The certification date is March 14, 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 June 13, 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 30.4 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 September 12, 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 Mississippi.

For General Information About TAA Contact: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: February 16, 2005.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 05–4164 Filed 3–3–05; 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), denied a petition for trade adjustment assistance (TAA) for seed potatoes that was filed on January 13, 2005, by the Spokane Hutterian Brethren, Reardan, Washington.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that imports for the February–May 2004 marketing year declined by 20 percent from the same period in 2003. Since imports declined during the marketing year, the petition did not meet the increasing imports requirement, a condition required for certifying a petition for TAA.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: February 16, 2005.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 05–4162 Filed 3–3–05; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers To Be Used for Publication of Legal Notice of Appealable Decisions and Publication of Notice of Proposed Actions for Eastern Region: Illinois, Indiana and Ohio, Michigan, Minnesota, Missouri, New Hampshire and Maine, Pennsylvania, Vermont and New York, West Virginia, and Wisconsin

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Eastern Region will publish notice of decisions subject to administrative appeal under 36 CFR parts 215 and 217 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR 215.5(a) and 36 CFR 217.5(d), the public shall be advised through **Federal Register** notice, of the principal newspaper to be utilized for publishing legal notices of decisions. Newspaper publication of notice of decisions is in addition to direct notice of decisions to those who have requested notice in writing and to those known to be interested in or affected by a special decision. In addition, the Responsible Official in the Eastern Region will also publish notice of proposed actions under 36 CFR part 215 in the newspapers that are listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR part 215(a), the public shall be advised, through **Federal Register** notice, of the principal newspapers to be utilized for publishing notices on proposed actions.

DATES: Use of these newspapers for purposes of publishing legal notice of decisions subject to appeal under 36 CFR parts 215 and 217, and notices of proposed actions under 36 CFR part 215 shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Patricial Rowell, Regional Appeals Assistant, Eastern Region, Gaslight Building, 7th Floor, 626 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, Phone: (414) 297–3439.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Eastern Region will give legal notice of decisions subject to appeal under 36 CFR part 217 and 36 CFR part 215 in the following newspapers which are listed by Forest Service administrative unit. The timeframe for comment on a proposed action shall be based on the date of publication of the notice of the proposed action in the principal newspaper. The timeframe for appeals shall be based on the date of publication of the legal notice of the decision in the principal newspaper for both 36 CFR parts 215 and 217.

Where more than one newspaper is listed for any unit, the first newspaper listed is the principal newspaper that will be utilized for publishing the legal notices of decisions. Additional newspapers listed for a particular unit are those newspapers the Deciding Officer expects to use for purposes of providing additional notice. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper. The following newspapers will be used to provide notice.

Eastern Region

Regional Forester Decisions: Affecting National Forest System lands in the States of Illinois, Indiana and Ohio, Michigan, Minnesota, Missouri, New Hampshire and Maine, Pennsylvania, Vermont and New York; West Virginia, Wisconsin and for any decision of Region-wide Impact.

Journal/Sentinel, published daily in Milwaukee, Milwaukee County, Wisconsin.

National Forests

Allegheny National Forest, Pennsylvania

Forest Supervisor Decisions:
- *Warren Times Observer*, Warren, Warren County, Pennsylvania

District Ranger Decisions:
- Bradford District: *Bradford Era,* Bradford, McKean County, Pennsylvania
- Marienville District: *The Kane Republican,* Kane, Pennsylvania

Chequamegon/Nicolet National Forest, Wisconsin

Forest Supervisor Decisions:
- *The Journal/Sentinel,* published daily in Milwaukee, Milwaukee County, Wisconsin

District Ranger Decisions:
- Eagle River/Florence District: *The Daily News,* published daily except Saturday, Rhinelander, Wisconsin
- Great Divide District: *The Daily Press,* published daily in Ashland County, Ashland, Wisconsin
- Medford/Park Falls District: *The Star News* published weekly in Medford, Taylor County, Wisconsin and *The Park Falls Herald,* published weekly in Park Falls, Price County, Wisconsin
- Washburn District: *The Daily Press,* published daily in Ashland County, Ashland, Wisconsin
- Lakewood/Laona District: *The Daily News,* published daily except Saturday, Rhinelander, Wisconsin

Chippewa National Forest, Minnesota

Forest Supervisor Decisions:
- *Bemidji Pioneer,* published daily in Bemidji, Beltrami County, Minnesota

District Ranger Decisions:
- Blackduck District: *The American,* published weekly in Blackduck, Beltrami County, Minnesota
- Cass Lake District: *The Cass Lake Times,* published weekly in Cass Lake, Cass County, Minnesota
- Deer River and Marcell Districts: *The Western Itasca Review,* published weekly in Deer River, Itasca County, Minnesota
- Walker District: *The Pilot/Independent,* published weekly in Walker, Cass County, Minnesota

Green Mountain National Forest, Vermont

Forest Supervisor Dicisions:

The Rutland Herald, published daily in Rutland, Rutland County, Vermont

District Ranger Decisions:

The Rutland Herald, published daily in Rutland, Rutland County, Vermont is the formal newspaper of record for all district ranger decisions. Other newspapers listed are optional.

Manchester District: *The Rutland Herald,* published daily in Rutland, Rutland County, Vermont; all others optional, the Bennington Banner, published daily in Bennington, Bennington County, Vermont *Manchester* Journal, published weekly in Bennington County, Vermont and *The Brattleboro Reformer,* published daily in Brattleboro, Windham County, Vermont

Middlebury District: *The Rutland Herald,* published daily in Rutland, Rutland County, Vermont; All others optional, *The Addison County Independent,* published twice weekly in Middlebury, Addison County, Vermont

Rochester District: *The Rutland Herald*, published daily in Rutland, Rutland County, Vermont; All others optional, *The Burlington Free Pass,* published daily in Burlington, Chittenden County, Vermont; *The Valley Reporter,* published weekly in Washington County, Vermont and *The Randolph Herald,* published weekly in Orange County, Vermont

Finger Lakes National Forest, New York

Forest Supervisor Decisions:

The Ithaca Journal, published daily in Ithaca, Tompkins County, New York

District Ranger Decisions:

Hector District: *The Ithaca Journal,* published daily in Ithaca, Tompkins County, New York

Hiawatha National Forest, Michigan

Forest Supervisor Decisions:

The Daily Press, published daily in Escanaba, Delta County, Michigan

District Ranger Decisions:

Rapid River District: *The Daily Press,* published daily in Escanaba, Delta County, Michigan

Manistique District: *The Daily Press,* published daily in Escanaba, Delta County, Michigan

Munising District: *The Mining Journal,* published daily in Marquette, Marquette County, Michigan

Sault Ste. Marie District: *The Evening News,* published daily in Sault Ste. Marie

St. Ignace District: *The Evening News,* published daily in Sault Ste. Marie, Chippewa County, Michigan

Hoosier National Forest, Indiana

Forest Supervisor Decisions:

The Hoosier Times, published in Bloomington, Monroe County, and Bedford, Lawrence County, Indiana

District Ranger Decisions:

Brownstown District: *The Hoosier Times,* published in Bloomington, Monroe County, and Bedford, Lawrence County, Indiana

Tell City District: *The Perry County News,* published in Tell City, Perry County, Indiana

Huron-Manistee National Forest, Michigan

Note: 1st Newspaper listed is mandatory—others optional.

Forest Supervisor Decisions:

Cadillac News, published daily in Cadillac, Wexford, County, Michigan; *Lake County Star*, published weekly in Baldwin, Lake County, Michigan, *Ludington Daily News*, published daily in Ludington, Mason County, Michigan; *Alcona County Review*, published weekly in Harrisville, Alcona County, Michigan; *Manistee News Advocate*, published daily in Manistee, Manistee County, Michigan; *Oscoda County Herald*, published weekly in Mio, Osconda County, Michigan; *Crawford County Avalanche*, published weekly in Grayling, Crawford County, Michigan; *Oscoda Press*, published weekly in Oscoda, Iosoco County, Michigan; *Fremont Times-Indicator*, published weekly in Fremont, Newaygo County, Michigan; *Oceana-Herald Journal*, published weekly in Hart, Mason County, Michigan; *Muskegon Chronicle*, published in Muskegon, Muskegon County, Michigan; *Grand Rapids Press*, published daily in Grand Rapids, Kent County, Michigan and *Big Rapids Pioneer*, published daily in Big Rapids, Mecosta County, Michigan

District Ranger Decisions:

Baldwin District: *Lake County Star,* published weekly in Baldwin, Lake County, Michigan and *Ludington Daily News*, published daily in Ludington, Mason County, Michigan

Cadillac District: *Cadillac News*, published daily in Cadillac, Wexford County, Michigan

Harrisville District: *Alcona County Review*, published weekly in Harrisville, Alcona County, Michigan

Manistee District: *Manistee News Advocate*, published daily in Manistee, Manistee County, Michigan

Mio District: *Oscoda County Herald*, published weekly in Mio, Oscoda County, Michigan and *Crawford County Avalanche*, published weekly in Grayling, Crawford County, Michigan

Tawas District: *Oscoda Press*, published weekly in Oscoda, Iosco County, Michigan

White Cloud District: *Fremont Times-Indicator*, published weekly in Fremont, Newaygo County, Michigan and *Oceana-Herald Journal*, published weekly in Hart, Mason County, Michigan

Mark Twain National Forest, Missouri

Forest Supervisor Decisions:

Rolla Daily News, published in Rolla Phelps County, Missouri

District Ranger Decisions:

Ava/Cassville District: *Springfield News Leader,* published weekly in Springfield, Greene County, Missouri

Cedar Creek District: *Fulton Sun,* published daily in Fulton, Callaway County, Missouri

Doniphan District: *Prospect News,* published weekly in Doniphan, Ripley County, Missouri

Eleven Point District: *Prospect News,* published weekly in Doniphan, Ripley County, Missouri

Rolla District: *Houston Herald,* published weekly (Thursdays) in Houston, Texas County, Missouri

Houston District: *Houston Herald,* published weekly (Thursdays) in Houston, Texas County, Missouri

Poplar Bluff District: *Daily American Republic,* published daily in Poplar Bluff, Butler County, Missouri

Potosi District: *The Independent-Journal,* published Thursday in Potosi, Washington County, Missouri

Fredericktown District: *The Democrat-News,* published weekly in Fredericktown, Madison County, Missouri

Salem District: *The Salem News,* published Tuesday and Thursday in Salem, Dent County, Missouri

Willow Springs District: *West Plains Daily Quill,* published daily in West Plains, Howell County, Missouri

Midewin Tall Grass Prairie, Wilmington, Illinois

Prairie Supervisor Decisions:

The Herald News, published daily in

Joliet, Illinois

Monongahela National Forest, Elkins, West Virginia

Forest Supervisor Decisions:
The Elkins Inter-Mountain, published daily in Elkins, Randolph County, WV
District Ranger Decisions:
Cheat-Potomac District: *The Grant County Press,* published weekly in Petersburg, Grant County WV
Gauley District: *The Nicholas Chronicle,* published weekly in Summersville, Nicholas County, WV
Greenbrier District: *The Pocahontas Times,* published weekly in Marlinton, Pocahontas County, WV
Marlinton-White Sulphur District: *The Pocahontas Times,* published weekly in Marlinton, Pocahontas County, WV

Ottawa National Forest, Michigan

Forest Supervisor Decisions:
The Ironwood Daily Globe, published in Ironwood, Gogebic County, Michigan and for those on the Iron River District, *The Reporter,* published in Iron River, Iron County, Michigan
District Ranger Decisions:
Bergland, Bessemer, Kenton, Ontonagon and Watersmeet Districts: *The Ironwood Daily Globe,* published in Ironwood, Gogebic County, Michigan
Iron River District: *The Reporter,* published in Iron River, Michigan, Iron County, Michigan

Shawnee National Forest, Illinois

Forest Supervisor Decisions:
Southern Illinoisan, published daily in Carbondale, Jackson County, Illinois
District Ranger Decisions:
Vienna-Elizabethtown, Jonesboro-Murphysboro Districts: *Southern Illinoisan,* published daily in Carbondale, Jackson County, Illinois

Superior National Forest, Minnesota

Forest Supervisor Decisions:
Duluth News-Tribune, published daily in Duluth, St. Louis County, Minnesota
District Ranger Decisions:
Gunflint District: *Cook County News-Herald,* published weekly in Grand Marais, Cook County, Minnesota
Kawishiwi District: *Timberjay*, published weekly in Ely, St. Louis County, Minnesota
LaCroix District: *Mesabi Daily News*, published daily in Virginia, St. Louis County, Minnesota
Laurentian District: *Mesabi Daily News*, published daily in Virginia, St. Louis County, Minnesota
Tofte District: *Duluth News-Tribune*, published daily in Duluth, St. Louis County, Minnesota

Wayne National Forest, Ohio

Forest Supervisor Decisions:
The Athens Messenger, published in Athens, Athens County, Ohio
Athens District: *Athens Messenger*, (same for Marietta Unit), published in Athens County, Ohio
Ironton District: *The Ironton Tribune*, published in Ironton, Lawrence County, Ohio

White Mountain National Forest, New Hampshire and Maine

Forest Supervisor Decisions:
The Union Leader, published daily in Manchester, County of Hillsborough, New Hampshire
Ammonoosuc District: *The Union Leader*, published daily in Manchester, County of Hillsborough, New Hampshire
Androscoggin District: *The Union Leader*, published daily in Manchester, County of Hillsborough, New Hampshire and published daily in the *Lewis Sun-Journal*, County of Androscoggin, Maine
Evans Notch District: *The Lewiston Sun-Journal*, published daily in Lewiston, County of Androscoggin, Maine
Pemigewasset District: *The Union Leader*, published daily in Manchester, County of Hillsborough, New Hampshire
Saco District: *The Union Leader*, published daily in Manchester, County of Hillsborough, New Hampshire and Lewiston Sun
* * *

Dated: February 25, 2005.

Forrest L. Starkey,

Deputy Regional Forester.

[FR Doc. 05–4240 Filed 3–3–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Notice of Meeting

AGENCY: USDA Forest Service, Siskiyou Resource Advisory Committee.

SUMMARY: The Siskiyou Resource Advisory Committee will meet on Friday, April 1, 2005 to discuss topics including orientation with new members, roles and responsibilities, overview of Secure Rural Schools and Community Self Determination Act, 2005 meeting schedule, electing a chair and use of overhead funds (12.5%). The meeting will be held at the Cave Junction City Hall, 222 W. Lister Street, Cave Junction, Oregon. It begins at 10 a.m., ends at 2 p.m.; the open public comments begin at 11:30 a.m. and ends at noon. Written comments may be submitted prior to the meeting and delivered to Designated Federal Official, Scott Conroy at the Rogue River-Siskiyou National Forest, P.O. Box 520, Medford, Oregon 97501.

FOR FURTHER INFORMATION CONTACT: Rogue River-Siskiyou National Forest Public Affairs Officer Patty Burel at (541) 858–2211, e-mail: *pburel@fs.fed.us*, or USDA Forest Service, PO Box 520, 333 West 8th Street, Medford, OR 97501.

Dated: February 23, 2005.

Scott Conroy,

Forest Supervisor.

[FR Doc. 05–4244 Filed 3–3–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension for a currently approved information collection in support of the program for the Business and Industry Loan Program.

DATES: Comments on this notice must be received by May 3, 2005 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Brenda Griffin, Senior Loan Specialist, RBS, U.S. Department of Agriculture, Stop 3224, telephone (202) 720–6802 or e-mail *brenda.griffin@usda.gov*. The Federal Information Relay service on (800) 887–8339 is available for TDD users.

SUPPLEMENTARY INFORMATION:

Title: Business and Industry Loan Program.

OMB Number: 0570–0014.

Expiration Date of Approval: June 30, 2005.

Type of Request: Extension of a currently approved information collection and recordkeeping requirements.

Abstract: The Business and Industry (B&I) Guaranteed and Direct Loan Programs are authorized under Section 310B of the Consolidated Farm and Rural Development Act, as amended. The purpose of the (B&I) Guaranteed and Direct Loan Programs is to improve, develop, or finance businesses, industry and employment and improve the economic and environmental climate in rural communities, including pollution control abatement and control. This purpose is achieved through bolstering the existing private credit structure, either through the guaranteeing of quality loans made by lending institutions, or making direct loans, thereby providing lasting community benefits. B&I program authority is composed of direct loan authority and loan guarantee authority. The program is administered by the Agency through a State Director serving the State.

All reporting and recordkeeping burden estimates for making and servicing B&I Guaranteed Loans have been moved to the new B&I Guaranteed Loan Program regulations which are at 7 CFR Parts 4279 and 4287. The only burden associated with 7 CFR Part 1980 is a small portion of B&I Direct loan servicing. 7 CFR Part 1951 is also used for servicing B&I Direct and Community Facility Loans.

Estimate of Burden: Public reporting for this collection of information is estimated to average 3 hours per response.

Respondents: Individuals, rural businesses, for profit businesses, non-profit businesses, Indian tribes, public bodies, and cooperatives.

Estimated Number of Respondents: 152.

Estimated Number of Responses per Respondent: 2.

Estimated Number of Responses: 352.

Estimated Total Annual Burden on Respondents: 835 hours.

Copies of this information collection can be obtained from Renita Bolden, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0035.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of RBS estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden 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. Comments may be sent to Renita Bolden, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 23, 2005.

Peter J. Thomas,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 05–4269 Filed 3–3–05; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Rural Broadband Access Loans and Loan Guarantees Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funds availability.

SUMMARY: The Rural Utilities Service (RUS), an agency delivering the U.S. Department of Agriculture's Rural Development Utilities Programs, announces funding available for the Rural Broadband Access Loan and Loan Guarantee program. For FY 2005, no less than $2.157 billion in loans is available, $2.032 billion for direct cost-of-money loans, $46 million for direct 4-percent loans, and $79 million for loan guarantees.

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Acting Assistant Administrator, Telecommunications Program, Rural Utilities Service, STOP 1590, 1400 Independence Avenue, SW., Washington, DC 20250–1590, telephone (202) 720–9554, Facsimile (202) 720–0810.

SUPPLEMENTARY INFORMATION:

General Information

During FY 2005, no less than $2.157 billion will be made available for loans and loan guarantees for the construction, improvement, and acquisition of facilities and equipment for broadband service in eligible rural communities. Of the total loan funds available, $2.032 billion will be available for direct cost-of-money loans, $46 million for 4-percent direct loans, and $79 million for loan guarantees. The Rural Broadband Access Loan and Loan Guarantee Program is authorized by the Rural Electrification Act (7 U.S.C. 601) (the Act), as added by the Farm Security and Rural Investment Act of 2002, Public Law 101–171.

Applications must be submitted in accordance with 7 CFR part 1738. This part and an application guide to assist in the preparation of applications are available in the Internet at: *http://www.usda.gov/rus/telecom/broadband.htm*. Application guides may also be requested from RUS by contacting the agency contact.

Agency Contacts

For application information, contact the following individual:

Kenneth Kuchno, Director, Broadband Division, Telecommunications Program, RUS/USDA, Room 2846, Stop 1599, 1400 Independence Avenue, SW., Washington, DC 20250–1599. (202) 690–4673.

Minimum and Maximum Loan Amounts

Loans and loan guarantees under this authority will not be made for less than $100,000. Maximum loan amounts apply only to the direct 4-percent loan program. The maximum amount available for any one applicant for a direct 4-percent loan is $7,500,000.

Minimum Rate of Data Transmission Criteria

The Secretary of Agriculture determines what qualifies as broadband service for the purpose of determining eligibility for financial assistance under the Rural Broadband Access Loan and Loan Guarantee Program. During fiscal year 2005, to qualify as broadband service, the minimum rate-of-data transmission shall be 200 kilobits/second in the customer's connection to the network, both from the provider to the customer (downstream) and from the customer to the provider (upstream).

State Allocations

The annual state allocation will not be made for Fiscal Year 2005. To ensure the obligations of funds by April, as required by the Farm Bill, an annual application submission deadline of January 31 for funding from the state allocation reserves was adopted and published in the enacting regulations. As this deadline has expired for Fiscal Year 2005, there will be no state allocation.

4-Percent Direct Loans

An applicant will be eligible for a direct 4-percent loan if (1) the community being served has a population of less than 2,500, and is not

currently receiving broadband service as defined at § 1738.11(b)(1), (2) the per capita income in the county being served as a percent of national per capita income, is not more than 65 percent of the national per capita income, as determined by the Bureau of Economic Analysis, U.S. Department of Commerce, at *http://www.bea.doc.gov/bea/regional/reis*, and using the data for the most recent year published as of the date of application, and (3) the population density, calculated as the total number of persons in the service area divided by the square miles of the service area is not more than 20 persons per square mile.

Dated: February 28, 2005.

Raymond P. Marchiori,

Acting Administrator, Rural Utilities Service.

[FR Doc. 05–4241 Filed 3–3–05; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a product to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must Be Received on or Before: April 3, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product will be required to procure the product listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product is proposed for addition to Procurement List for production by the nonprofit agency listed:

Product

Product/NSN: 120cc High Density Polyethylene Pharmacy Bottle, 6530–00–NIB–0120.
NPA: Alphapointe Association for the Blind, Kansas City, Missouri.
Contracting Activity: Veterans Affairs National Acquisition Center, Hines, Illinois.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Product/NSN: Kit, Backpack, 1375–01–204–1930.
NPA: Blind Industries & Services of Maryland, Baltimore, Maryland.
Contracting Activity: Naval Ships Parts Control Center, Mechanicsburg, Pennsylvania.
Product/NSN: Parts Kit, Spare, 1375–01–217–8725.
NPA: Blind Industries & Services of Maryland, Baltimore, Maryland.
Contracting Activity: Naval Ships Parts Control Center, Mechanicsburg, Pennsylvania.
Product/NSN: Trailer, Backpack, 1375–01–254–7721.
NPA: Blind Industries & Services of Maryland, Baltimore, Maryland.
Contracting Activity: Naval Ships Parts Control Center, Mechanicsburg, Pennsylvania.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 05–4255 Filed 3–3–05; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* April 3, 2005.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: On October 1, 2004 and January 7, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR 58882 and 70 FR 1413) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of

the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

The following comments pertain to Commissary Shelf Stocking, Custodial & Warehousing, Offutt Air Force Base, Nebraska.

Comments were received from the current contractor indicating that he had previously been impacted by the Committee's actions that have slowed business growth and impacted employees. Besides the impact calculated as a percent of gross sales the commenter believes that when the Committee determines impact it should also consider the effect on the current employees, the increased cost of unemployment insurance on the impacted company and how the Committee determines the effect of previous additions that impacted the contractor.

In addition the commenter raised question about the capability of the nonprofit agency to do the commissary work, if it is a Nebraska nonprofit agency and how would he know that the 75 percent direct labor ratio requirement was being met.

The Committee recognizes that when it adds a product or service to the Procurement List that many of the existing workers will lose their current jobs. The proposed addition to the Procurement List is projected to create over 18 jobs for people with severe disabilities, whose unemployment rate is over 70 percent, well above the rate for other groups. The benefit to people with severe disabilities created by this Procurement List addition outweighs the harm which may be done to the firm's employees who could more readily find other jobs.

The commenter is correct that the Committee must consider previous impact(s) when it adds an item to the Procurement List. It is the Committee's practice to consider the cumulative impact of its actions for the most recent three-year period expressed as a percentage of firm's current total sales. In addition, the Committee also looks at all other occurrences where the current contractor has been impacted. The current contractor has been previously impacted four times, twice in 1992, once in 1997, and once in 2000.

The Committee does not believe that these actions over a decade reflect an excessive amount of impact, nor does it believe that the increase in unemployment premiums the contractor experienced because some jobs were lost to the JWOD Program raises the total impact to the severe level.

BH Services, Inc. has been found technically capable of performing the service. The nonprofit agency that will be performing this project has successfully been participating in the JWOD Program since 1974. It has been successfully providing commissary services at another location since 1989 and other services at Offutt AFB since 1996.

As with small businesses, there is no requirement that a nonprofit agency be incorporated in the State where the Federal contract is being performed. The nonprofit agency that will perform the work is actually incorporated in South Dakota, but as noted above has been providing services at Offutt AFB since 1996.

The 75 percent direct labor ratio requirement is a requirement for all of the work done by a nonprofit and does not necessarily apply to an individual JWOD project. However, the nonprofit agency that will be performing the commissary project at Offutt has a direct labor ratio on its current JWOD projects of over 80%.

The following material pertains to all of the items being added to the Procurement List.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Flat Highlighter, Yellow, 7520–01–201–7791.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.
Product/NSN: Laser Labels, 7530–01–289–8190—White label size—1″ x 4″; 7530–01–289–8191—White label size—1″ x 2⅝″; 7530–01–302–5504—White label size—1⅓″ x 4″; 7530–01–336–0540—White label size—2″ x 4″; 7530–01–349–4463—White label size—8½″ x 11″; 7530–01–349–4464—White label size—3⅓″ x 4.″
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania.
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.

Services

Service Type/Location: Commissary Shelf Stocking, Custodial & Warehousing, Offutt Air Force Base, Nebraska.
NPA: BH Services, Inc., Box Elder, South Dakota.
Contracting Activity: Defense Commissary Agency, Fort Lee, Virginia.
Service Type/Location: Custodial & Grounds Maintenance, Navy and Marine Corps Reserve Center, 314 Graves Mill Road, Lynchburg, Virginia.
NPA: Goodwill Industries of the Valleys, Inc., Roanoke, Virginia.
Contracting Activity: Naval Facilities Engineering Command Contracts, Norfolk, Virginia.
Service Type/Location: Laundry Service, Veterans Integrated Service Network (VISN12), Jesse Brown VA Medical Center, Chicago, Illinois (and it's divisions), VA Medical Center Hines, Hines, Illinois.
NPA: Goodwill Industries of Southeastern Wisconsin, Inc., Milwaukee, Wisconsin.
Contracting Activity: VISN 12, Great Lakes Network, Milwaukee, Wisconsin.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 05–4256 Filed 3–3–05; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

Certain Preserved Mushrooms From India: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to timely requests by two manufacturers/exporters and the

petitioner,[1] the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain preserved mushrooms from India with respect to four companies. The period of review (POR) is February 1, 2003, through January 31, 2004.

We preliminarily determine that sales have been made below normal value (NV). Interested parties are invited to comment on these preliminary results. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

DATES: *Effective Date:* March 4, 2005.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Kate Johnson, AD/CVD Operations, Office 2, Import Administration—Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4929, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 1999, the Department published in the **Federal Register** an amended final determination and antidumping duty order on certain preserved mushrooms from India (64 FR 8311).

In response to timely requests by two manufacturers/exporters, Agro Dutch Foods Ltd. (Agro Dutch) and Premier Mushroom Farms (Premier), as well as the petitioner, the Department published a notice of initiation of an administrative review with respect to the following companies: Agro Dutch, Dinesh Agro Products, Ltd. (Dinesh Agro), Flex Foods, Ltd. (Flex Foods), Himalya International, Ltd. (Himalya), Premier, Saptarishi Agro Industries Ltd. (Saptarishi Agro), and Weikfield Agro Products Ltd. (Weikfield) (69 FR 15788, March 26, 2004). The POR is February 1, 2003, through January 31, 2004.

On March 29, 2004, the Department issued antidumping duty questionnaires to the above-mentioned companies. We received responses to the original questionnaire during the period May through June 2004 from Agro Dutch, Flex Foods, Premier, and Weikfield.

On June 24, 2004, the petitioner timely withdrew its request for review with respect to Dinesh Agro, Himalya, and Saptarishi Agro. Accordingly, we published a *Notice of Partial Rescission of Antidumping Duty Administrative Review,* 69 FR 58393 (September 30, 2004) with respect to Dinesh Agro, Himalya, and Saptarishi Agro.

We issued supplemental questionnaires to Agro Dutch, Flex Foods, Premier, and Weikfield during the period July 2004 through January 2005, and received responses from these companies during the period August 2004 through February 2005.

On June 18, June 25, and July 12, 2004, the petitioner timely requested that the Department initiate cost investigations with respect to home market sales of subject merchandise made by Premier, Weikfield and Flex Foods, respectively. With respect to Weikfield, we did not consider the allegation because we had already initiated a cost investigation and requested that Weikfield respond to the cost of production (COP) portion of the Section D questionnaire. Specifically, we stated in the Department's antidumping questionnaire issued on March 29, 2004, that because we disregarded sales that were below the COP in the most recently completed administrative review (*i.e.,* the 2001–2002 review), Weikfield was required to respond to Section D of the questionnaire. We received Weikfield's response on May 24, 2004.

With respect to Premier, we also did not consider the allegation because we found sales made below the COP in the final results of the 2002–2003 administrative review (*see Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review,* 69 FR 51630 (August 20, 2004)). Accordingly, on August 20, 2004, we requested that Premier respond to Section D of the questionnaire. We received Premier's response on September 10, 2004.

With respect to Flex Foods, we analyzed the petitioner's cost allegation and determined that the petitioner did not provide a reasonable basis to believe or suspect that Flex Foods was selling certain preserved mushrooms in India at prices below the COP. Therefore, on September 15, 2004, we decided not to initiate an investigation to determine whether Flex Foods' home market sales of preserved mushrooms were made at prices below the COP during the POR. *See Petitioner's Allegation of Sales Below the Cost of Production for Flex Foods Limited,* Memorandum to File, dated September 15, 2004.

In the March 29, 2004, questionnaire, we advised Agro Dutch that, if the Department found sales below COP in the final results of the 2002–2003 administrative review, the Department would request that Agro Dutch respond to section D of the antidumping questionnaire. Agro Dutch submitted its section D response as part of its original questionnaire response on June 4, 2004. Subsequently, we determined that Agro Dutch made comparison market sales below the COP in the final results of the 2002–2003 administrative review (*see Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review,* 69 FR 51630 (August 20, 2004)); thus, we automatically initiated a sales-below-cost investigation on Agro Dutch's third country sales in the current review.

On October 15, 2004, the Department extended the time limit for the preliminary results in this review until February 28, 2005. *See Certain Preserved Mushrooms from the People's Republic of China and India: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Reviews,* 69 FR 61202.

On October 25, 2004, the petitioner made a second timely allegation that Flex Foods sold certain preserved mushrooms in its home market at prices below the COP. Based on this allegation, on November 30, 2004, the Department found reasonable grounds to believe or suspect that Flex Foods was selling certain preserved mushrooms in India at prices below the COP and initiated a cost investigation of Flex Foods' home market sales (*see Petitioner's Second Allegation of Sales Below the Cost of Production for Flex Foods Limited,* Memorandum From The Team to Louis Apple, dated November 30, 2004 (*Flex Foods COP Initiation Memo*)).

On February 3 and 7, 2005, the petitioner submitted comments with respect to the preliminary results calculations for Weikfield and Flex Foods, respectively.

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species Agaricus bisporus and Agaricus bitorquis. ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces.

[1] The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes the following domestic companies: L.K. Bowman, Inc., Monterey Mushrooms, Inc., Mushroom Canning Company, and Sunny Dell Foods, Inc.

Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is currently classifiable under subheadings 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the *Harmonized Tariff Schedule of the United States* (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this order dispositive.

Fair Value Comparisons

To determine whether sales of certain preserved mushrooms by the respondents to the United States were made at less than NV, we compared export price (EP), as appropriate, to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the ''Cost of Production Analysis'' section below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents covered by the description in the ''Scope of the Order'' section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market (Premier, Weikfield, and Flex Foods) or third country market (Agro Dutch) within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order: preservation method, container type, mushroom style, weight, grade, container solution, and label type.

Export Price

For Agro Dutch, Flex Foods, Premier, and Weikfield, we used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly by the producer/exporter in India to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) methodology was not otherwise indicated. We based EP on packed prices to unaffiliated purchasers in the United States.

We did not make an adjustment to EP for the freight expense offset claimed by Agro Dutch and Premier because such an adjustment is not contemplated by the Act or the Department's regulations. Specifically, the program described by the respondents, granting an international freight subsidy from the Indian Agricultural and Processed Food Products Export Development Authority for the export of certain food products, is not contingent upon importation of inputs used to produce the exported subject merchandise—the duty drawback system contemplated under section 772(c)(1)(B) of the Act. Neither is it packing (as contemplated under section 772(c)(1)(A) of the Act) nor the amount of any countervailing duty, as there is no companion countervailing duty investigation on certain preserved mushrooms from India (see section 772(c)(1) of the Act). Accordingly, we disregarded the claimed amounts for purposes of the preliminary results.

Agro Dutch

Agro Dutch reported its U.S. sales on an FOB Indian port, CIF or ex-dock duty paid basis. We made deductions from the starting price, where appropriate, for international freight, foreign inland freight, transportation insurance, foreign and U.S. brokerage and handling, and U.S. duty in accordance with section 772(c)(2) of the Act and 19 CFR 351.402.

Flex Foods

Flex Foods reported its U.S. sales on a C&F basis. We made deductions from the starting price, where appropriate, for international freight and foreign inland freight, in accordance with section 772(c)(2) of the Act and 19 CFR 351.402.

Premier

Premier reported its U.S. sales on an FOB Hyderabad basis. We made a deduction from the starting price, where appropriate, for brokerage and handling expenses, in accordance with section 772(c)(2) of the Act and 19 CFR 351.402. For certain invoices, we reduced the reported gross prices by the amount of price reductions taken by the customer for rejected merchandise and other items. *See Preliminary Results Calculation Memorandum for Premier Mushroom Farms* (Premier), Memorandum to the File from Kate Johnson, dated February 25, 2005 (*Premier Calculation Memorandum*).

Weikfield

Weikfield reported its U.S. sales on an FOB Indian port, delivered duty paid, or C&F basis. We made deductions from the starting price, where appropriate, for foreign inland freight, foreign inland and marine insurance, foreign and U.S. brokerage and handling expenses, international freight, and U.S. duty, in accordance with section 772(c)(2) of the Act and 19 CFR 351.402.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

With regard to Flex Foods, Premier, and Weikfield, the aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise. Therefore, we determined that the home market provides a viable basis for calculating NV for Flex Foods, Premier, and Weikfield.

With regard to Agro Dutch, we determined that the home market was not viable because Agro Dutch's aggregate volume of home market sales of the foreign like product was less than five percent of its aggregate volume of U.S. sales of the subject merchandise. However, we determined that the third country market of Israel was viable, in accordance with section 773(a)(1)(B)(ii) of the Act. Therefore, pursuant to section 773(a)(1)(C) of the Act, we used third country sales as a basis for NV for Agro Dutch.

Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on

sales at the same level of trade (LOT) as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing (*id.*); *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa* (*Plate from South Africa*) 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process from the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''), including selling functions, class of customer (''customer category''), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices [2]), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States,* 243 F. 3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, and where the difference affects price comparability, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if an NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Plate from South Africa* at 61731. We obtained information from the respondents regarding the marketing stages involved in making the reported foreign market and U.S. sales, including a description of the selling activities performed for each channel of distribution. Company-specific LOT findings are summarized below.

Agro Dutch

Agro Dutch sold to importers/traders through one channel of distribution in both the U.S. and Israeli markets. As described in its questionnaire response, Agro Dutch performs no selling functions in the United States or in any of the third countries to which it sells, including Israel. Therefore, these sales channels are at the same LOT. Accordingly, all sales comparisons are at the same LOT for Agro Dutch and an adjustment pursuant to section 773(a)(7)(A) is not warranted.

Flex Foods

Flex Foods sold only to distributors/manufacturers through one channel of distribution in both the U.S. and home markets. In its questionnaire responses, Flex Foods did not report any selling functions in the home or U.S. market. In addition, Flex Foods reported that it did not incur any technical service, advertising, or warehousing expenses in either the home market or the United States. Based on our analysis of its responses, we preliminarily determine that Flex Foods' sales in both markets are all at the same LOT. Accordingly, an adjustment pursuant to section 773(a)(7)(A) is not warranted.

Premier

In the home market, Premier sold directly to small local distributors, hotels, and small retailers. We examined Premier's home market distribution system, including selling functions, classes of customers, and selling expenses, and determined that Premier offers the same support and assistance to all its home market customers. Accordingly, all of Premier's home market sales are made through the same channel of distribution and constitute one LOT.

With regard to sales to the United States, Premier made only EP sales to large distributors. We examined Premier's U.S. distribution system and determined that Premier does not perform any selling functions or activities in conjunction with its U.S. sales except for making freight arrangements. Accordingly, all of Premier's U.S. sales are made through the same channel of distribution and constitute one LOT. This EP LOT differed considerably from the home market LOT with respect to sales process, advertising, and inventory maintenance. Consequently, we could not match the EP LOT to sales at the same LOT in the home market. Because there was only one LOT in the home market, there was no pattern of consistent price differences between different LOTs in the home market, and we do not have any other information that provides an appropriate basis for determining an LOT adjustment. Accordingly, we have not made an LOT adjustment. *See* section 773(a)(7)(A) of the Act.

Weikfield

As noted in past reviews (*see, e.g., Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review,* 69 FR 10659, 10633 (March 8, 2004) (*AR4 Preliminary Results*)), Weikfield's home market sales are made via two channels of distribution: (a) Direct sales to large quantity end-users, and b) sales to distributors and ''carrying and forwarding'' (C&F) agents, which either resell the merchandise to small quantity end-users, or act as Weikfield's agent in selling and distributing the merchandise to small quantity end-users. We examined Weikfield's home market distribution system, including selling functions, classes of customers, and selling expenses, and determined that Weikfield offers the same support and assistance to all its home market customers except with respect to sales promotion activities. In the Indian states of Maharashtra and Goa, Weikfield's affiliate WPCL includes Weikfield's preserved mushroom products in its market development activities to promote sales.

With respect to such activities as sales negotiation, freight and distribution services, and inventory maintenance, the two home market distribution channels involve the same services performed by Weikfield. With respect to sales promotion activities, the level of sales promotion activities performed by WPCL for certain home market sales are not so extensive as to constitute a separate LOT. Accordingly, we consider all of Weikfield's home market sales to constitute one LOT.

With regard to sales to the United States, Weikfield made only EP sales to importers/traders. We examined Weikfield's U.S. distribution system, including selling functions, classes of customers, and selling expenses, and determined that Weikfield offers the same support and assistance to all its U.S. customers. Accordingly, all of Weikfield's U.S. sales are made through the same channel of distribution and constitute one LOT.

Weikfield contends in its August 16, 2004, response at page 5 that the EP

[2] Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling expenses and profit for CV, where possible.

LOT is significantly different from the home market LOT because Weikfield states that it or WPCL actively markets its products to its home market customers and their customers, while it does not do so for its U.S. customers. We compared the EP LOT to the home market LOT and concluded that the selling functions performed for home market customers are sufficiently similar to those performed for U.S. customers. As we determined in the prior review (*AR4 Preliminary Results* at 10633), and as discussed in Weikfield's questionnaire responses in the instant review, apart from the promotion activities conducted by WPCL on Weikfield's behalf in the home market, which are not extensive, as discussed above, Weikfield does not perform different selling activities in either the U.S. or home markets. Except for the occasional handling of customer complaints, Weikfield reports that it does not offer or perform selling activities in either market. Accordingly, we consider the EP and home market LOTs to be the same. Consequently, we are comparing EP sales to sales at the same LOT in the home market.

Cost of Production Analysis

As stated in the ''Background'' section of this notice, based on a timely allegation filed by the petitioner, the Department initiated an investigation to determine whether Flex Foods' home market sales were made at prices less than the COP within the meaning of section 773(b) of the Act. *See Flex Foods COP Initiation Memo.*

In addition, the Department disregarded certain sales made by Weikfield in the 2001–2002 administrative review and certain sales made by Agro Dutch and Premier in the 2002–2003 administrative review, pursuant to findings in those reviews that sales failed the cost test (*see Notice of Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from India,* 68 FR 41303 (July 11, 2003) and *Notice of Final Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from India,* 69 FR 51630 (August 20, 2004). Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Agro Dutch, Premier, and Weikfield made sales in the home market or third country at prices below the cost of producing the merchandise in the current review period.

A. Calculation of Cost of Production

We calculated the COP on a product-specific basis, based on the sum of each company's respective costs of materials and fabrication for the foreign like product, plus amounts for selling, general and administrative (SG&A) expenses, interest expense, and all expenses incidental to placing the foreign like product in a condition packed ready for shipment in accordance with section 773(b)(3) of the Act.

We relied on the COP information submitted by Agro Dutch, Flex Foods, Premier, and Weikfield, except for the adjustments discussed below. With respect to Flex Foods, although certain deficiencies continue to exist in its COP responses, including the reporting of fresh mushroom costs, general and administrative (G&A) expenses, and interest expenses, we have determined that the use of facts available based on adverse inferences under section 776(b) of the Act is not warranted because, based on Flex Foods' level of participation and cooperation in this review, Flex Foods did not fail to act to the best of its ability in this review.

Flex Foods

1. Flex Foods incorrectly reported different fresh mushroom costs for its sales of whole/sliced preserved mushrooms and its sales of preserved mushroom pieces and stems, claiming, contrary to the Department's consistent practice, that its fresh mushroom costs for pieces and stem products should be valued significantly less than its fresh mushroom costs for whole/sliced products. Furthermore, Flex Foods' reported fresh mushroom costs, and the underlying reconciliation worksheets submitted in the February 8, 2005, response, did not tie to Flex Foods' financial statement data. Consistent with our longstanding practice in the preserved mushrooms proceedings of assigning the same cost to the fresh mushrooms grown by the respondent and used in the production of the preserved mushrooms without regard to mushroom style, we recalculated these costs to reflect one weighted-average fresh mushroom cost for all products. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India,* 63 FR 72246, 72248, (December 31, 1998) (wherein the Department stated that ''* * * the cost-generating elements of growing mushrooms for both preserved and fresh, whole or pieces, large or small mushrooms are identical. * * *''), and *Certain Preserved Mushrooms From Indonesia: Final Results of Antidumping Duty Administrative Review,* 66 FR 36754, July 13, 2001, Issues and Decision Memorandum at Comment 2.

Specifically, we recalculated a fresh mushroom material cost for the POR based on the raw material data provided in Flex Foods' 2003–2004 financial statement and the reported POR adjustments in Annexure B(10) of the February 8, 2005, response. Because Flex Foods did not report a POR breakdown for the labor and variable overhead costs related to the growing and harvesting of the fresh mushrooms, we recalculated the labor and variable overhead costs related to the growing and harvesting of fresh mushrooms using the fiscal year 2003–2004 labor and variable overhead farming costs reported by Flex Foods in Annexure 1 of the February 8, 2005, response, which tied to the Flex Foods' 2003–2004 financial statement. To this calculated total fresh mushroom cost per kilogram, we applied a fresh mushroom to canned mushroom yield-loss ratio derived from Flex Foods' submitted data to obtain a total fresh mushroom cost on a kilogram per net drained-weight basis. *See Flex Foods Ltd. Preliminary Results Calculation Memorandum,* Memorandum to the File from Sophie Castro and P. Lee Smith, dated February 25, 2005 (*Flex Foods Calculation Memorandum*).

2. Flex Foods reported its G&A and interest expenses based on its 2002–2003 financial statements. We recalculated the G&A and interest expenses consistent with the 2003–2004 financial statements which most closely corresponded to the POR in accordance with our normal practice (*see Flex Foods Calculation Memorandum*).

3. In calculating its fixed overhead expenses, Flex Foods included G&A expenses related to canning. We reclassified the canning-related G&A expenses included in the fixed overhead costs to the company-wide G&A expenses, consistent with our normal practice (see *Flex Foods Calculation Memorandum*).

4. Flex Foods failed to report cost data for one of its home market products. We used the cost reported for a similar product/control number as facts available under section 776(a)(1) of the Act (*see Flex Foods Calculation Memorandum*).

We intend to issue Flex Foods an additional supplemental questionnaire after the preliminary results to allow it a final opportunity to address the remaining deficiencies in its COP responses prior to the final results of this review.

Weikfield

1. We revised the reported G&A expense to reflect the corrected ratio

reported at revised Exhibit SD–9 in the January 15, 2005, submission.

B. Test of Home or Third Country Market Prices

For all four companies, on a product-specific basis, we compared the weighted-average COP to the prices of home market or third country market sales of the foreign like product, as required by section 773(b) of the Act, in order to determine whether these sales were made at prices below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices (inclusive of interest revenue, where appropriate) were exclusive of any applicable movement charges, discounts, direct and indirect selling expenses and packing expenses, revised where appropriate as discussed below under ''Price-to-Price Comparisons.'' In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made: (1) Within an extended period of time, (2) in substantial quantities; and (3) at prices which did not permit the recovery of all costs within a reasonable period of time.

C. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we disregarded the below-cost sales because we determined that they represented ''substantial quantities'' within an extended period of time, and were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1) of the Act.

The results of our cost test for Weikfield indicated that less than 20 percent of home market sales of any given product were at prices below COP. We therefore retained all sales in our analysis and used them as the basis for determining NV.

The results of our cost tests for Agro Dutch, Flex Foods and Premier indicated that, for certain products, more than 20 percent of home market or third country sales within an extended period of time were at prices below COP which would not permit the full recovery of all costs within a reasonable period of time. *See* 773(b)(2) of the Act. Therefore, in accordance with section 773(b)(1) of the Act, we excluded these below-cost sales from our analysis and used the remaining sales as the basis for determining NV.

Price-to-Price Comparisons

For all four respondents, we based NV on the price at which the foreign like product is first sold for consumption in the home market or third country market, in the usual commercial quantities and in the ordinary course of trade, and at the same LOT as EP, where possible, as defined by section 773(a)(1)(B)(i) of the Act.

Home market or third country prices were based on ex-Hyderabad, FOB Indian port, or delivered prices. We reduced the starting price for billing adjustments (Agro Dutch), discounts (Weikfield) and movement expenses (Agro Dutch, Flex Foods, Premier and Weikfield), and increased the starting price for interest revenue (Premier), where appropriate, in accordance with section 773(a)(6) of the Act and 19 CFR 351.401.

We disregarded Agro Dutch's claimed freight expense offset for certain third country sales, granted under the Indian government program discussed in the ''Export Price'' section above, because this type of adjustment to NV is not contemplated by section 773(a)(6) of the Act or the Department's regulations.

We recalculated Premier's interest revenue consistent with Premier's February 10, 2005, submission. We reclassified Premier's home market discounts as commissions, consistent with our treatment of this adjustment in the 2002–2003 administrative review (*see Certain Preserved Mushrooms from India: Preliminary Results of Antidumping Duty Administrative Review,* 69 FR 10659 (March 8, 2004)), as affirmed in our final results (*see Certain Preserved Mushrooms from India: Final Results of Antidumping Duty Administrative Review,* 69 FR 51630 (August 20, 2004)).

As indicated at page 3 of Weikfield's January 15, 2005, submission, Weikfield shipped merchandise to certain home market customers using Weikfield's own trucks. Therefore, consistent with our treatment in the previous review (*see AR4 Preliminary Results* at 10644), we did not deduct movement expenses from the starting price for these sales.

We also reduced the starting price for packing costs incurred in the home market, in accordance with section 773(a)(6)(B)(i) of the Act, and increased NV to account for U.S. packing expenses in accordance with section 773(a)(6)(A) of the Act. We made circumstance-of-sale adjustments for credit expenses and bank fees, where appropriate, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. In addition, we made adjustments to NV, where appropriate, for differences in costs attributable to differences in the physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. For Premier and Weikfield, we made an adjustment to NV to account for commissions paid in the home market but not in the U.S. market, in accordance with 19 CFR 351.410(e). As the offset for home market commissions, we applied the lesser of home market commissions or U.S. indirect selling expenses.

As in past reviews, Weikfield contends that its commission payments to WPCL on certain sales are at arm's length. In the instant review, Weikfield claims that, due to changes in the equity ownership of Weikfield, as listed in Exhibit A–3 of the May 24, 2004, questionnaire response, Weikfield is not controlled by WPCL, implying that Weikfield and WPCL should not be considered affiliated parties for purposes of considering whether commissions were made at arm's length. However, our analysis of the ownership structure in that response indicates no substantive change in Weikfield's ownership structure or affiliation with WPCL. Even if the issuance of additional stock may dilute the nominal ownership of Weikfield by affiliated parties, it does not change the fundamental nature of the affiliation between Weikfield and WPCL, which remain closely tied through common shareholders as well as WPCL's shareholdings in Weikfield. Weikfield has offered no additional evidence to support its arm's-length claim. Therefore, consistent with our treatment in the two previous reviews, we have not considered Weikfield's commission payments to WPCL on home market and U.S. sales to be at arm's length, and instead have included the selling expenses incurred by WPCL on Weikfield's behalf as part of Weikfield's indirect selling expenses. *See Certain Preserved Mushrooms From India: Final Results of Antidumping Duty Administrative Review,* 68 FR 41303 (July 11, 2003) (*AR3 Final Results*), Issues and Decision Memorandum at Comments 4 and 7.

We recalculated Weikfield's home market and U.S. imputed credit expenses because the amounts reported in its sales listings did not reconcile with the methodology described in the questionnaire response. In addition, we recalculated the home market credit

expense in order to deduct freight expenses from the price base for sales made on a freight-collect basis.To calculate home market and U.S. indirect selling expenses, we used the indirect selling expense ratios Weikfield reported in its January 15, 2005, submission at revised Exhibit C–3.

Calculation of Constructed Value

We calculated CV in accordance with section 773(e) of the Act, which indicates that CV shall be based on the sum of each respondent's cost of materials and fabrication for the subject merchandise, plus amounts for SG&A expenses, profit and U.S. packing costs. We relied on the submitted CV information except for the following adjustments:

Flex Foods

We made the same adjustments to the CV data as we made to the COP data, as discussed above under ''Calculation of Cost of Production.''

Weikfield

We made the same adjustments to the CV data as we made to the COP data, as discussed above under ''Calculation of Cost of Production.''

Price-to-Constructed Value Comparisons

For each respondent, we made only price-to-price comparisons as there were contemporaneous above-cost sales in each comparison market to match to each U.S. sale.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the weighted-average dumping margins for the period February 1, 2003, through January 31, 2004, are as follows:

Manufacturer/exporter	Percent margin
Agro Dutch Foods, Ltd	2.79
Flex Foods, Ltd	114.76
Premier Mushroom Farms	41.67
Weikfield Agro Products, Ltd	25.69

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c). If requested, a hearing will be scheduled after determination of the briefing schedule.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in the respective case briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted in accordance with a schedule to be determined. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department will issue appropriate appraisement instructions for the companies subject to this review directly to CBP within 15 days of publication of the final results of this review.

With respect to Agro Dutch, Flex Foods, Premier and Weikfield, we intend to calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping margins calculated for all of the U.S. sales examined and dividing this amount by the total entered value of the sales examined.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, at or above 0.50 percent). *See* 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be those established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.30 percent, the ''All Others'' rate made effective by the LTFV investigation (*see Notice of Amendment of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Preserved Mushrooms From India,* 64 FR 8311 (February 19, 1999)). These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: February 25, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–903 Filed 3–3–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–825]

Polyethylene Terephthalate Film, Sheet, and Strip From India: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 4, 2005.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen or Sam Zengotitabengoa, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2769 or (202) 482–4195, respectively.

Background

On August 30, 2004, the Department of Commerce (the Department) published a notice of initiation of administrative review of the countervailing duty order on polyethylene terephthalate film, sheet, and strip (PET film) from India covering the period from January 1, 2003, through December 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 69 FR 52857 (August 30, 2004). The preliminary results are currently due no later than April 2, 2005.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of the date of publication of the order for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Extension of Time Limit for Preliminary Results of Review

The Department finds that it is not practicable to complete the preliminary results in this countervailing duty administrative review of PET film from India within the 245-day statutory time frame because additional time is needed to fully analyze a new subsidy allegation submitted by the petitioner in this review, new subsidy programs, and submissions from a new respondent, as well as to conduct the verifications of the questionnaire responses of the respondents in this administrative review.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for completion of the preliminary results of this review until no later than August 1, 2005, which is the next business day after 365 days from the last day of the anniversary month of the date of publication of the order. The deadline for the final results of this administrative review continues to be 120 days after the publication of the preliminary results.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: February 28, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–902 Filed 3–3–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Insular Affairs

[Docket No. 990813222–0035–03]

RIN 0625–AA55

Allocation of Duty-Exemptions for Calendar Year 2005 Among Watch Producers Located in the Virgin Islands

AGENCY: Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

ACTION: Notice.

SUMMARY: This action allocates calendar year 2005 duty exemptions for watch producers located in the Virgin Islands pursuant to Public Law 97–446, as amended by Public Law 103–465 (''the Act'').

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–3526.

SUPPLEMENTARY INFORMATION: Pursuant to the Act, the Departments of the Interior and Commerce (the Departments) share responsibility for the allocation of duty exemptions among watch assembly firms in the United States insular possessions and the Northern Mariana Islands. In accordance with Section 303.3(a) of the regulations (15 CFR 303.3(a)), the total quantity of duty-free insular watches and watch movements for calendar year 2004 is 1,866,000 units for the Virgin Islands (65 FR 8048, February 17, 2000).

The criteria for the calculation of the calendar year 2005 duty-exemption allocations among insular producers are set forth in § 303.14 of the regulations (15 CFR 303.14).

The Departments have verified and adjusted the data submitted on application form ITA–334P by Virgin Islands producers and inspected their current operations in accordance with § 303.5 of the regulations (15 CFR 303.5).

In calendar year 2004 the Virgin Islands watch assembly firms shipped 319,624 watches and watch movements into the customs territory of the United States under the Act. The dollar amount of creditable corporate income taxes paid by Virgin Islands producers during calendar year 2004 plus the creditable wages paid by the industry during calendar year 2004 to residents of the territory was $2,041,956.

There are no producers in Guam, American Samoa or the Northern Mariana Islands.

The calendar year 2005 Virgin Islands annual allocations, based on the data verified by the Departments, are as follows:

Name of firm	Annual allocation
Belair Quartz, Inc	500,000
Hampden Watch Co., Inc	200,000
Goldex Inc	50,000
Tropex, Inc	300,000

The balance of the units allocated to the Virgin Islands is available for new entrants into the program or producers

who request a supplement to their allocation.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration, Department of Commerce.

Nikolao Pula,

Acting Deputy Assistant Secretary for Insular Affairs; Department of the Interior.

[FR Doc. 05–4169 Filed 3–3–05; 8:45 am]

BILLING CODE 3510–DS–P; 4910–93–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022505B]

Fisheries of the Northeastern United States; Atlantic Mackerel Fishery; Scoping Process

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

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS); notice of scoping meetings; request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) announces its intention to prepare, in cooperation with NMFS, a SEIS in accordance with the National Environmental Policy Act to assess potential effects on the human environment of alternative measures for managing the Atlantic mackerel (*Scomber scombrus*) fishery pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. Amendment 9 to the Atlantic Mackerel, Squid and Butterfish Fishery Management Plan (FMP) is under development and a NOI was previously published on November 29, 2001. Issues scoped under the previous NOI include: a multi-year specification process, the expiration of the moratorium on entry into the *Illex* squid fishery, revisions to the overfishing definition for *Loligo* squid, measures to minimize the adverse effects of fishing on essential fish habitat, and measures to reduce discards and bycatch. This notice further expands the scope of measures under consideration to include controlled access measures for the Atlantic mackerel fishery. This notice also announces a public process for determining the scope of issues to be addressed and for identifying the significant issues relating to the possible development of a limited access program for the Atlantic mackerel fishery. The intended effect of this notice is to alert the interested public of the scoping process and to provide for public participation. During this scoping period, the Council is seeking comments on the possible development of a limited access program for Atlantic mackerel only.

DATES: Written comments on the intent to prepare an SEIS must be received on or before 5 p.m., local time, April 4, 2005. The first public scoping meeting will be held at 10 a.m. on March 17, 2005, at the Ramada Inn Outer Banks Resort and Conference Center located at 1701 S. Virginia Dare Trail, Kill Devil Hills, NC 27948 (telephone 252–441–2151). The second scoping meeting will be held at 7 p.m. on March 28, 2005, at the Hotel Viking, One Bellevue Avenue, Newport, RI 02840 (telephone 401–848–4864).

ADDRESSES: Written comments on the possible development of a limited access program for the Atlantic mackerel fishery for inclusion in the SEIS for Amendment 9 to the FMP should be directed to Mr. Daniel T. Furlong, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New St., Dover, DE 19904, (telephone 302–674–2331). Comments may also be sent via fax to 302–674–5399 or by e-mail to MackLA9@noaa.gov. Please include in the subject line of e-mail comments the following document identifier: ''Scoping Comments-Mackerel Limited Access.'' The scoping document may also be obtained from the Council office at the address and telephone number above or via the Internet at *http://www.nero.noaa.gov/nero/*.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel T. Furlong, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New St., Dover, DE 19904, (telephone 302–674–2331).

SUPPLEMENTARY INFORMATION: On July 5, 2002 (67 FR 44794), NMFS announced that it was considering proposed rulemaking to control future access to the Atlantic mackerel fishery if a management program was implemented to limit the number of participants in the fishery. The purpose of this ''control date'' was to discourage speculative entry into the Atlantic mackerel fishery while the Council and NMFS discussed whether and how access to the Atlantic mackerel fishery should be controlled. The Council recently voted to include the possible development of a limited access program to the Atlantic mackerel fishery in Amendment 9 at its January 2005 meeting. The issue was subsequently discussed at a meeting of the Councils' Atlantic Mackerel, Squid and Butterfish Committee (Committee) on February 18, 2005, in Cape May, NJ. The Committee agreed to seek public comment on the following questions relative to limiting access to the Atlantic mackerel fishery: (1) Is limited access to the Atlantic mackerel fishery warranted or should no action be taken? (2) If limited access in the mackerel fishery is warranted, then what type of system is appropriate? (3) What criteria should the Council consider to qualify vessels for limited access to the mackerel fishery? (4) What is the appropriate qualifying period and should the control date be used in the definition of the qualifying period? (5) Should the Council consider the implementation of a trigger which would initiate controlled access at a future date? (6) What provisions for vessel upgrades, if any, should the Council consider if limited access is implemented in the mackerel fishery? (7) Under limited access conditions, should rules governing at sea processing and transfers at sea in the mackerel fishery be established? and (8) To what extent does the lack of joint management of the Atlantic mackerel resource with Canada affect the development of a limited access program in the portion of the fishery under US jurisdiction?

Special Accommodations

These meetings are 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, telephone (302) 674–2331, at least 5 days prior to the scoping meetings.

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

Dated: February 28, 2005.

Alan D. Risenhoover,

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

[FR Doc. E5–895 Filed 3–3–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022805B]

Pacific Fishery Management Council; Public Meetings and Hearings

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

ACTION: Notice of public hearings.

SUMMARY: The Pacific Fishery Management Council (Council) announces the dates and locations of public hearings to solicit comments on proposed options for ocean salmon fishery management measures for the 2005 season.

DATES: Written comments on the salmon management options must be received by March 29, 2005, at 4:30 p.m., Pacific time.

ADDRESSES: Written comments should be sent to Mr. Donald Hansen, Chairman, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384, telephone: 503–820–2280 (voice) or 503–820–2299 (fax). For specific hearing locations, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, telephone: 503–820–2280.

SUPPLEMENTARY INFORMATION: *March 28–29, 2005:* Public hearings will be held to receive comments on the proposed ocean salmon fishery management options adopted by the Council. All public hearings begin at 7 p.m. on the dates and at the locations specified here.

March 28, 2005: Chateau Westport, Beach Room, 710 W Hancock, Westport, WA 98595, telephone 360–268–9101.

March 28, 2005: Red Lion Hotel, South Umpqua Room, 1313 N Bayshore Drive, Coos Bay, OR 97420, telephone 541–269–4099.

March 29, 2005: Fort Bragg Town Hall, 363 North Main Street, Fort Bragg, CA 95437, telephone 707–961–2825.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 (voice), or 503–820–2299 (fax) at least 5 days prior to the meeting date.

Dated: February 28, 2005.

Alan D. Risenhoover,

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

[FR Doc. E5–893 Filed 3–3–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by April 4, 2005.

Title, Form, and OMB Number: Application for Appointment as Reserves of the Air Force or USAF Without Component; Air Force (AF) Form 24; OMB Number 0701–0096.

Type of Request: Extension.

Number of Respondents: 5,899.

Responses Per Respondent: 1.

Annual Responses: 5,899.

Average Burden per Response: 20 minutes.

Annual Burden Hours: 1,966.

Needs and Uses: The information collection requirement is necessary for providing necessary information to determine if applicant meets qualifications established for appointment as a Reserve (Air National Guard or the United States (ANGUS) and U.S. Air Force Reserves (USAFR)) or in the USAF without component. Use of the Social Security Number (SSN) is necessary to make positive identification of an applicant and his or her records.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Lewis Oleinick.

Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings, WHS/ESCD/Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: February 28, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–4207 Filed 3–3–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: DoD, Office of the Assistant Secretary of Defense for Health Affairs, TRICARE Management Activity.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of Defense, Office of the Assistant Secretary of Defense for Health Affairs, TRICARE Management Activity announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performances 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 3, 2005.

ADDRESSES: Written comments should be submitted to: Office of the Assistant Secretary of Defense for Health Affairs, TRICARE Management Activity, Skyline Five, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call Capt. Deborah McKay, Office of the Assistant Secretary of Defense for Health Affairs, TRICARE Management Activity at (703) 681–0064.

Title and OMB Number: A Case Control Study to Identify Risk Factors Associated with Myocarditis or Pericarditis Among Smallpox Primary Vaccinees in the U.S. Military; OMB Number 0720–TBD.

Needs and Uses: Section 743 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 authorized the Secretary of Defense to establish a center devoted to "* * * longitudinal study to evaluate data on the health conditions of members of the Armed Forces upon their return from deployment * * *" Based upon this

legislation, the Assistant Secretary of Defense for Health Affairs established the DoD Center for Deployment Health Research on September 30, 1999 (OSD/HA Policy #99–028). The Department of Defense shares with the President and Congress a firm commitment to improve the health of our veterans, their families, and all who serve our nation, now and in the future. The National Science and Technology Council (NSTC) Presidential Review Directive 5 (PRD–5), Planning for the Health Preparedness for and Readjustment of the Military, Veterans, and their Families after Future Deployments is an interagency plan which provides a comprehensive set of recommendations designed to help ensure this obligation is met in a manner that takes into consideration the successes and failures of past deployments. A key recommendation in this plan and necessity if we are to meet this commitment is treatment, research, and surveillance efforts aimed at minimizing adverse health effects that may be experienced during and after deployment.

In its ongoing response to this legislation, DoD plans to conduct a postal survey of current and past U.S. service members who received the smallpox vaccine under the DoD Smallpox Vaccination Program, which began on December 13, 2002. Subsequent to initiation of this program, a small percentage of service members developed either myocarditis or pericarditis following a primary smallpox vaccination. (Refs: Halsell JS, *et al.*, JAMA 2003;289:3283–9; Arness MK, *et al.*, AJE 2004;160:642–51). In response to these cases, the DoD established additional policies and guidelines: (1) Policy for Smallpox Vaccination and Persons with Cardiac Conditions (OSD/HA, Policy 03–002), and (2) Establishment of Case Management Guidelines for Smallpox Vaccine Associated Myopericarditis (OSD/HA, June 9, 2003). The survey will obtain risk factor information from identified myocarditis or percarditis cases and a number of smallpox vaccinated but healthy controls. The objective of the study is to understand why a small percentage of smallpox-vaccinated service members develop myocarditis or pericarditis.

Affected Public: Individuals or households.

Annual Burden Hours: 200.

Number of Respondents: 400.

Responses per Respondent: 1.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Collection

The survey to be implemented is comprised of 44 questions that ascertain the health status of the respondent in a temporal sequence with respect to his or her smallpox vaccination. The questions utilized are either from previously standardized instruments, or developed by a team of epidemiologists and clinicians, including cardiologists. Question categories include: Identification (3 questions), Smallpox Vaccination Education (5 questions), Weight and Height (4 questions), Family-Related and Other Risks (4 questions), Diet and Nutrition (2 questions), Exercise and Physical Fitness (12 questions), Tobacco Use: Smoking (7 questions), Occupational Exposures (1 question), Foreign Deployments (2 questions), Other Illnesses (2 questions), and Other Vaccinations (2 questions).

Data Collection Method

Addresses for potential cases will be obtained from the DoD National Vaccine Healthcare Center Network (NVHC). The NVHC will send a letter to each potential case informing them of this study. We expect to enroll approximately 80 myocarditis or pericarditis cases, and will also enroll approximately 320 non-cases. The DoD Center for Deployment Health will conduct all postcard and questionnaire mailings. All targeted subjects will receive up to three questionnaire mailings as prescribed in Dillman's Tailored Design Method. A postcard alerting the target subject to the arrival of each questionnaire will precede the questionnaire mailing. Each postcard will serve to confirm correct addresses. For those post cards returned as undeliverable, addresses will be sought from military and civilian address sources. New controls will be randomly selected to replace those individuals untraceable after exhaustive address search.

Dated: February 28, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–4208 Filed 3–3–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0043]

Federal Acquisition Regulation; Submission for OMB Review; Delivery Schedules

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning delivery schedules. A request for public comments was published at 69 FR 74505, December 14, 2004. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 4, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (V), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0043, Delivery Schedules, in all correspondence.

FOR FURTHER INFORMATION CONTACT

Michael Jackson, Contract Policy Division, GSA (202) 208–4949.

SUPPLEMENTARY INFORMATION:

A. Purpose

The time of delivery or performance is an essential contract element and must be clearly stated in solicitations and contracts. The contracting officer may set forth a required delivery schedule or may allow an offeror to propose an alternate delivery schedule. The information is needed to assure supplies or services are obtained in a timely manner.

B. Annual Reporting Burden

Respondents: 3,440.
Responses Per Respondent: 5.
Total Responses: 17,200.
Hours Per Response: .167.
Total Burden Hours: 2,872.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (V), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0043, Delivery Schedules, in all correspondence.

Dated: February 24, 2005

Rodney P. Lantier

Director, Contract Policy Division.

[FR Doc. 05–4258 Filed 3–3–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0153]

Federal Acquisition Regulation; Submission for OMB Review; OMB Circular A–119

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0153).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning OMB Circular A–119. A request for public comments was published at 69 FR 74504, December 14, 2004. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 4, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (V), 1800 F Streets, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No.9000–0153, OMB Circular A–119, in all correspondence.

FOR FURTHER INFORMATION CONTACT Michael Jackson, Contract Policy Division, GSA (202) 208–4949.

SUPPLEMENTARY INFORMATION:

A. Purpose

On February 19, 1998, a revised OMB Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' was published in the **Federal Register** at 63 FR 8545, February 19, 1998. FAR Subparts 11.1 and 11.2 were revised and a solicitation provision was added at 52.211–7, Alternatives to Government-Unique Standards, to implement the requirements of the revised OMB circular. If an alternative standard is proposed, the offeror must furnish data and/or information regarding the alternative in sufficient detail for the Government to determine if it meets the Government's requirements.

B. Annual Reporting Burden

Respondents: 100.
Responses Per Respondent: 1.
Total Responses: 100.
Hours Per Response: 1.
Total Burden Hours: 100.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (V), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0153, OMB Circular A–119, in all correspondence.

Dated: February 24, 2005

Rodney P. Lantier

Director,Contract Policy Division.

[FR Doc. 05–4259 Filed 3–3–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Joint Supplemental Environment Impact Statement/ Supplemental Environmental Impact Report for the San Luis Rey River Flood Control Project, Operations and Maintenance Plan; San Diego County, CA

AGENCY: Department of the Army; U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers (Corps) and City of Oceanside amends the notice published in the **Federal Register** on June 8, 1999 (64 FR 30496), which announced the Corps' intent to prepare a Supplemental Environmental Impact Statement (EIS) for the proposed reauthorization study of the on-going flood control project on the San Luis Rey River, City of Oceanside, San Diego County, California. This amendment to the notice revises the June 8, 1999, notice to announce the Corps' intent to prepare a Supplemental Environmental Impact Statement/Environmental Impact Report (SEIS/EIR) to address changes to the operation and maintenance (O&M) plan for the on-going flood control project on the San Luis Rey River. The study area is located in the City of Oceanside, in the northwest portion of San Diego County, California. The study area is comprised of the lower 7.2 miles of the river, from the Pacific Ocean to the College Boulevard Bridge. The original Final Environmental Impact Statement (FEIS) was dated September 25, 1970.

DATES: Submit comments on or before April 4, 2008.

ADDRESSES: U.S. Army Corps of Engineers, Los Angeles District, CESPL–PD–RN, P.O. Box 532711, Los Angeles, CA 90053–2325.

FOR FURTHER INFORMATION CONTACT: Ms Tiffany Kayama; phone (213) 452–3845; or e-mail: *tiffany.r.kayama@usace.army.mil*.

SUPPLEMENTARY INFORMATION: Changes to the O&M plan are necessary to address Federal- and State-listed endangered species that now inhabit the project area and critical habitat that has been designated within the project area.

The changes are focused on vegetation clearing and sediment removal to provide for flood control consistent with the project scope and authorization, and eliminate or reduce potential effects to listed species.

The Corps conducted a public scoping meeting on June 16, 1999, in Oceanside, California. This scoping meeting was held to solicit public input on significant environmental issues associated with the on-going flood control project. A second public scoping meeting will not be held.

Useful information requested includes other environmental studies, published and unpublished data, and alternatives that should be addressed in the analysis. Individuals and agencies may offer information relevant or data relevant to the proposed study and provide comments by mailing the information to Ms. Tiffany Kayama (*see* **DATES** and **ADDRESSES**). Request to be placed on the mailing list for announcements and the Draft SEIS/EIR also should be sent to Ms. Kayama (*see* **ADDRESSES**).

A fully array of alternatives to the proposed action will be developed for analyses, including the no action plan.

Alex C. Dornstauder,

Colonel, U.S. Army, District Engineer.

[FR Doc. 05–4177 Filed 3–3–05; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Cancellation of the Notice of Intent To Prepare a Draft Environmental Impact Statement for the Acme Basin B Discharge Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice; cancellation.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers hereby cancels its Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS) for the Acme Basin B Discharge Project, as published in **Federal Register** on Friday, May 24, 2002 (67 FR 36577).

The notice is canceled because, during scoping for this project and development of alternatives, it appeared that each of the alternatives would affect the same 410 acres of agricultural lands, converting sugar cane into functional wetlands, resulting in discharge of cleaner water into Loxahatchee National Wildlife Refuge (WCA–1), increasing the spatial extent of Everglades wetlands and reducing freshwater flows into Lake Worth Lagoon. While all of these effects are environmentally beneficial, the relative magnitude of the impacts in the context of greater Everglades's restoration was determined not to be significant. There are not expected to be any adverse impacts on public health and safety; the affected area (Acme Basin B) is not environmentally unique; the significant WCA–1 wetlands will benefit by a relatively small increment, as will Lake Worth Lagoon. No public controversy related to the proposed alternatives developed during scoping for this project, nor are there high levels of uncertainty, unique or unknown risks associated with the study, nor have surveys revealed the presence of any significant wildlife, cultural resource elements or contaminants.

An environmental Assessment will be prepared and coordinated for the proposed action. This document is expected to be available in August 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Allen, Flood Control and Flood Plain Management Section, Planning Division, Jacksonville District, Corps of Engineers, Post Office Box 4970, Jacksonville, FL 32232–0019, Phone: (904) 232–3206.

SUPPLEMENTARY INFORMATION: None.

Dated: February 22, 2005.

James C. Duck,

Chief, Planning Division.

[FR Doc. 05–4178 Filed 3–3–05; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity; Notice of Members

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education.

What Is the Purpose of This Notice?

The purpose of this notice is to list the members of the National Advisory Committee on Institutional Quality and Integrity (National Advisory Committee) and to give the public the opportunity to nominate candidates for the positions to be vacated by those members whose terms will expire on September 30, 2005. This notice is required under Section 114(c) of the Higher Education Act (HEA), as amended.

What Is the Role of the National Advisory Committee?

The National Advisory Committee is established under Section 114 of the HEA, as amended, and is composed of 15 members appointed by the Secretary of Education from among individuals who are representatives of, or knowledgeable concerning, education and training beyond secondary education, including representatives of all sectors and type of institutions of higher education.

The National Advisory Committee meets at least twice a year and provides recommendations to the Secretary of Education pertaining to:

- The establishment and enforcement of criteria for recognition of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA.
- The recognition of specific accrediting agencies or associations.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.

As the Committee deems necessary or on request, the Committee also advises the Secretary about:

- The eligibility and certification process for institutions of higher education under Title IV, HEA.
- The development of standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies in order to establish the interim eligibility of those institutions to participate in federally funded programs.
- The relationship between (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

What Are the Terms of Office for Committee Members?

The term of office of each member is 3 years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed is appointed for the remainder of the term. A member may be appointed, at the Secretary's discretion, to serve more than one term.

Who Are the Current Members of the Committee?

The current members of the National Advisory Committee are:

Members With Terms Expiring 9/30/05

- Honorable Randolph A. Beales, Former Attorney General of Virginia, and Attorney at Law, Christian & Barton, LLP, Virginia.

• Dr. Karen A. Bowyer, President, Dyersburg State Community College, Tennessee.

• Dr. Gerrit W. Gong, Assistant to the President, Brigham Young University, Utah.

• Mr. Donald R. McAdams, President, Center for Reform of School Systems, Texas.

• Dr. George A. Pruitt, President, Thomas A. Edison State College, New Jersey.

Members With Terms Expiring 9/30/06

• Mr. Ronald S. Blumenthal, Senior Vice President, Administration, Kaplan University, Iowa.

• Dr. Carol D'Amico, Chancellor, Ivy Tech State College, Central Indiana.

• Dr. Thomas E. Dillon, President, Thomas Aquinas College, California.

• Mr. David Johnson, III, Student, Brigham Young University and University of Utah.

• Dr. Ronald F. Mason, Jr., President, Jackson State University, Mississippi.

Members With Terms Expiring 9/30/07

• Dr. Robert C. Andringa, President, Council for Christian Colleges and Universities, Washington, DC.

• Dr. Lawrence W. Burt, Associate Vice President of Student Affairs and Director of Student Financial Aid, University of Texas at Austin.

• Dr. Lawrence J. DeNardis, President Emeritus, University of New Haven, Connecticut.

• Dr. Laura Palmer Noone, President, University of Phoenix, Arizona.

How Do I Nominate an Individual for Appointment as a Committee Member?

If you would like to nominate an individual for appointment to the Committee, send the following information to the Committee's Executive Director:

• A copy of the nominee's resume; and

• A cover letter that provides your reason(s) for nominating the individual and contact information for the nominee (name, title, business address, and business phone and fax numbers).

The information must be sent by June 3, 2005 to the following address: Bonnie LeBold, Executive Director, National Advisory Committee on Institutional Quality and Integrity, U.S. Department of Education, room 7007, MS 7592, 1990 K Street, NW., Washington, DC 20006.

How Can I Get Additional Information?

If you have any specific questions about the nomination process or general questions about the National Advisory Committee, please contact Ms. Bonnie LeBold, the Committee's Executive Director, telephone: (202) 219–7009, fax: (202) 219–7008, e-mail: Bonnie.LeBold@ed.gov between 9 a.m. and 5 p.m., Monday through Friday.

Authority: 20 U.S.C. 1011c.

Dated: February 22, 2005.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 05–4213 Filed 3–3–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Dockets No. EA–163–B]

Application To Export Electric Energy; Duke Energy Trading and Marketing, L.L.C.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Duke Energy Trading and Marketing, L.L.C. (DETM) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before April 4, 2005.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX (202) 287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) (202) 586–4708 or Michael Skinker (Program Attorney) (202) 586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On January 28, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order EA–163 authorizing DETM to transmit electric energy from the United States to Canada as a power marketer. On February 16, 2000, in Order No. EA–163–A, FE renewed DTEM's authorization to export electric energy to Canada for a five-year term that expired on February 16, 2005.

On February 9, 2005, DETM filed an application with FE for renewal of the export authority contained in Order No. EA–163–A for an additional five-year term. DTEM proposes to export electric energy to Canada and to arrange for the delivery of those exports over the international transmission facilities presently owned by Basin Electric Power Corporative, Bonneville Power Administration, Eastern Maine Electric Power Cooperative, International Transmission Company, Joint Owners of the Highgate Interconnection Facilities, Long Sault Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power & Light, Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corp., Northern States Power, Vermont Electric Company, and Vermont Electric Transmission Company.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the dates listed above.

Comments on the DETM application to export electric energy to Canada should be clearly marked with Docket EA–163–B. Additional copies are to be filed directly with David W. Wright, Duke Energy Trading and Marketing, L.L.C., 5400 Westheimer Court, Houston, TX 77056, and Gordon J. Smith, Esq., John & Hengerer, 1200 17th Street, NW., Suite 600, Washington, DC 20036.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on February 28, 2005.

Ellen Russell,

Acting Deputy Director, Electric Power Regulation, Office of Fossil Energy.

[FR Doc. 05–4220 Filed 3–3–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Dockets No. EA–166–B]

Application to Export Electric Energy; Duke Energy Trading and Marketing, L.L.C.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Duke Energy Trading and Marketing, L.L.C. (DETM) has applied to renew its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before April 4, 2005.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX (202) 287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) (202) 586–4708 or Michael Skinker (Program Attorney) (202) 586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On March 9, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order EA–166 authorizing DETM to transmit electric energy from the United States to Mexico as a power marketer. On December 22, 1999, in Order No. EA–166–A, FE renewed DTEM's authorization to export electric energy to Canada for a five-year term that expired on December 22, 2004.

On February 9, 2005, DETM filed an application with FE for renewal of the export authority contained in Order No. EA–166–A for an additional five-year term. DTEM proposes to export electric energy to Mexico and to arrange for the delivery of those exports over the international transmission facilities presently owned by San Diego Gas & Electric, El Paso Electric Company, Central Power & Light Company, Sharyland Utilities, and Comision Federal de Electricidad, the national electric utility of Mexico.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the dates listed above.

Comments on the DETM application to export electric energy to Mexico should be clearly marked with Docket EA–166–B. Additional copies are to be filed directly with David W. Wright, Duke Energy Trading and Marketing, L.L.C., 5400 Westheimer Court, Houston, TX 77056, *and* Gordon J. Smith, Esq., John & Hengerer, 1200 17th Street, NW., Suite 600, Washington, DC 20036.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov.* Upon reaching the Fossil Energy Home page, select ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on February 28, 2005.

Ellen Russell,

Acting Deputy Director, Electric Power Regulation, Office of Fossil Energy.

[FR Doc. 05–4225 Filed 3–3–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. PP–252]

Withdrawal of Notice of Intent To Prepare an Environmental Impact Statement GenPower, New York, L.L.C.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of withdrawal.

SUMMARY: On February 6, 2002, the Department of Energy (DOE) announced its intent to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act of 1969 (NEPA) for GenPower New York, L.L.C.'s (GenPower) request for a Presidential permit for a proposed international electric transmission line. The proposed Federal action in this EIS was to grant GenPower a Presidential permit for the construction, operation, maintenance, and connection of a submarine cable originating in Goldboro, Nova Scotia, Canada, and terminating in New York City, New York. The EIS would have evaluated the potential environmental impacts associated with the proposed Federal action and reasonable alternatives.

In a letter dated February 17, 2005, GenPower notified DOE that as a result of market conditions, it has decided not to undertake the project and has withdrawn its application for a Presidential permit. Therefore, further preparation of an EIS is not necessary. The notice of intent to prepare an EIS is withdrawn and the NEPA process is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Ellen Russell, Office of Fossil Energy, FE–27, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone 202–586–9624; electronic mail: *ellen.russell@hq.doe.gov.*

For general information on the DOE NEPA process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119. Phone: 202–586–4600 or leave a message at 800–472–2756; facsimile: 202–586–7031.

SUPPLEMENTARY INFORMATION: The construction, operation, maintenance and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038.

On September 29, 2001, GenPower filed an application with the Office of Fossil Energy (FE) of DOE for a Presidential permit. GenPower proposed to construct a ±500,000-volt direct current submarine cable across the U.S. border with Canada. The transmission line proposed by GenPower would have originated in Goldboro, Nova Scotia, Canada, and terminated approximately 800 to 900 miles to the south east in New York City, New York.

Issued in Washington, DC, on February 28, 2005.

Ellen Russell,

Acting Deputy Director, Electric Power Regulation, Office of Fossil Energy.

[FR Doc. 05–4221 Filed 3–3–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Wanapa Energy Center; Notice of Availability of Record of Decision (ROD)

AGENCY: Bonneville Power Administration (Bonneville), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to implement the proposed action identified in the Wanapa Energy Center Final Environmental Impact Statement (DOE/EIS–0342, December 2004). Under the proposed action, Bonneville will offer contract terms for interconnection of the Wanapa Energy Center with the Federal Columbia River Transmission System, as requested by the Confederated Tribes of the Umatilla Indian Reservation. The proposed project involves constructing and operating a 1,200-megawatt, natural gas-fired, combined-cycle power generation facility at a 47-acre site on tribal trust land near the Cities of Hermiston and Umatilla in Umatilla County, Oregon. Wanapa may construct this project in phases. A new switchyard will be constructed at the Wanapa site, and Bonneville will construct a new 500-kilovolt single-circuit transmission line from this switchyard 4.4 miles west to Bonneville's existing McNary Substation, which Bonneville will expand by about 2.75 acres on the east side.

ADDRESSES: Copies of the ROD and EIS may be obtained by calling BPA's toll-free document request line, 1–800–622–4520. The ROD and EIS are also available on our Web site, *http://www.efw.bpa.gov.*

FOR FURTHER INFORMATION, CONTACT: Thomas C. McKinney, Bonneville Power Administration—KEC–4, PO Box 3621, Portland, Oregon, 97208–3621; toll-free telephone number 1–800–282–3713; fax number 503–230–5699; or e-mail *tcmckinney@bpa.gov.*

Issued in Portland, Oregon, on February 24, 2005.

Steven G. Hickok,

Deputy Administrator.

[FR Doc. 05–4219 Filed 3–3–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request.

SUMMARY: The EIA has submitted the Residential Energy Consumption Survey to the Office of Management and Budget (OMB) for review and a reinstatement under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be filed by April 4, 2005. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202) 395–7285) is recommended. The mailing address is 726 Jackson Place, NW., Washington, DC 20503. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by FAX (202) 287–1705) or e-mail (*grace.sutherland@eia.doe.gov*) is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 287–1712.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA–457 A/G ''Residential Energy Consumption Survey.''
2. Energy Information Administration.
3. OMB Number 1905–0092.
4. Reinstatement.
5. Mandatory.
6. EIA's Residential Energy Consumption Survey (RECS) collects basic data necessary to meet EIA's legislative mandates as well as the energy consumption and expenditures and related subjects for the household sector of the U.S. economy.
7. Individuals, Federal, State, and local Government as well as Business or other for-profit.
8. 2,341 hours of burden.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) (44 U.S.C. 3501 *et seq.*).

Issued in Washington, DC, February 24, 2005.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 05–4224 Filed 3–3–05; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ORD–2004–0022; FRL–7880–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Technology Performance and Product Information to Support Vendor Information Summaries (Renewal), EPA ICR Number 2154.02, OMB Control Number 2050–0194

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces

that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 28, 2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before April 4, 2005.

ADDRESSES: Submit your comments, referencing docket ID number ORD–2004–0022, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *ord.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Research and Development (ORD) Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Eric N. Koglin, Environmental Protection Agency, P.O. Box 93478, Las Vegas, Nevada 89193–3478; telephone number: (702) 798–2332; fax number: (702) 798–2291; e-mail address: *koglin.eric@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 21, 2004 (69 FR 76464) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. ORD–2004–0022, which is available for public viewing at the ORD Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Technology Performance and Product Information to Support Vendor Information Summaries (Renewal).

Abstract: The U.S. EPA Office of Research and Development's National Homeland Security Research Center (NHSRC) is helping to protect human health and the environment from adverse impacts resulting from intentional acts of terror. With an emphasis on decontamination and consequence management, water infrastructure protection, and threat and consequence assessment, NHSRC scientists and engineers are working to develop tools and information that will help detect the intentional introduction of chemical, biological, and radiological contaminants in buildings or water systems, the containment of these contaminants, the decontamination of buildings and/or water systems, and the disposal of material resulting from cleanups. With a substantial background in environmental protection and risk management, NHSRC researchers are well-positioned to develop the tools and technologies needed to respond to existing and potential terrorist threats. The focus of these efforts is aimed at providing advice, guidance, and scientific expertise on homeland security issues to emergency response personnel, consequence managers, decision-makers, and government officials that will result in improved protection for all citizens.

An important facet of the NHSRC mission is identifying, testing, and evaluating technologies to support water utility operators, emergency responders, and facility managers. EPA lacks a well documented array of technological tools to adequately address all of the monitoring, detection, decontamination, and treatment tasks associated with remediating contaminated facilities and drinking water supply systems. EPA is aware that significant research, development, and commercialization efforts are underway by the private sector, but EPA needs to manage the information concerning the myriad of technology choices faced by its customers.

EPA has initiated this effort to develop brief vendor information summaries of available technologies relevant to the detection and decontamination of drinking water systems, building materials, building structures, and indoor air that may become contaminated with chemical, biological, or radiological contaminants. These summaries will be based upon vendor-generated or provided information including any independent, validated test data generated by governmental or other organizations and provided to EPA through this ICR. EPA will produce 4–10 page summaries on each of the technologies for which vendors voluntarily agreed to submit the requested information. These summaries will be shared with EPA and other emergency response personnel, building and facility managers, and water utility operators. The information provided by technology developers and vendors will also be used by the NHSRC's Technology Testing and Evaluation Program (TTEP) to identify technologies that may be suitable candidates for testing and evaluation and to track those technologies under development that may eventually be ready for rigorous testing and evaluation.

Developers and vendors with applicable technologies are being searched through all available mechanisms. Once identified, the developer or vendor is sent a letter requesting the submission of specific information pertinent to the performance, operation, maintenance, and cost of the technology. The submission of information is voluntary. Because the summarized information will be publically available, technology vendors/developers will be discouraged from submitting CBI.

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

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 15 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Homeland security technology developers or vendors.

Estimated Number of Respondents: 70.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 1,050 hours.

Estimated Total Annual Cost: $66,000, includes $0 annual capital/startup costs, $500 annual O&M costs, and $65,000 annual labor costs.

Changes in the Estimates: There is an increase of 675 hours in the total estimated burden currently identified in the OMB Inventory of Approved Burdens. This increase is due to adjustments made to the amount of time necessary for the compiling, submitting and commenting on information provided under this ICR after having consulted with respondents.

Dated: February 25, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–4276 Filed 3–3–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket #: R10–OAR–2005–OR–0001; FRL–7880–8]

Adequacy Status of the Portland, OR Carbon Monoxide Maintenance Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found the Second Portland Area Carbon Monoxide Maintenance Plan adequate for transportation conformity purposes. On March 2, 1999, the DC Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for conformity determinations until EPA has found them adequate. This affects future transportation conformity determinations prepared, reviewed and approved by the Portland Metro, Oregon Department of Transportation, Federal Highway Administration and the Federal Transit Administration.

DATES: This finding is effective March 21, 2005.

FOR FURTHER INFORMATION CONTACT: The finding is available at EPA's conformity Web site: *http://www.epa.gov/otaq/transp.htm*, (once there, click on the ''Transportation Conformity'' button, then look for ''Adequacy Review of SIP Submissions''). You may also contact Wayne Elson, U.S. EPA, Region 10, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Ave, Seattle WA 98101; (206) 553–1463 or *elson.wayne@epa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Today's notice is simply an announcement of a finding that we have already made. EPA Region 10 sent a letter to the Washington Department of Ecology dated February 15, 2005, stating that the SIP is adequate for transportation conformity purposes.

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP is adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review and it also should not be used to prejudge our ultimate approval of the SIP. Even if we find a SIP adequate for conformity, the SIP could later be disapproved. For the reader's ease, the motor vehicle emission budget included in the Maintenance Plan in pounds per winter time day of carbon monoxide is: 1,238,575 in 2005; 1,033,578 in 2010; and 1,181,341 in 2017.

We have described our process for determining the adequacy in SIPs in guidance dated May 14, 1999. This guidance in now is reflected in the amended transportation conformity rule, July 1, 2004 (69 FR 40004). We followed this process in making our adequacy determination.

Authority: 42 U.S.C. 7401–7671q.

Dated: February 18, 2005.

Michael F. Gearheard,

Acting Regional Administrator, Region 10.

[FR Doc. 05–4274 Filed 3–3–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7880–1]

Announcement of the Board of Trustees for the National Environmental Education and Training Foundation, Inc.

SUMMARY: The National Environmental Education and Training Foundation was created by Section 10 of Public Law 101–619, the National Environmental Education Act of 1990. It is a private 501(c)(3) non-profit organization established to promote and support education and training as necessary tools to further environmental protection and sustainable, environmentally sound development. It provides the common ground upon which leaders from business and industry, all levels of government, public interest groups, and others can work cooperatively to expand the reach of environmental education and training programs beyond the traditional classroom. The Foundation supports a grant program that promotes innovative environmental education and training programs; it also develops partnerships with government and other organizations to administer projects that promote the development of an environmentally literal public.

The Administrator of the U.S. Environmental Protection Agency, as required by the terms of the Act,

announces the following appointment to the National Environmental Education and Training Foundation, Inc. Board of Trustees. The appointee is Arthur Gibson, Vice President of Environment, Health and Safety for Home Depot. This appointee will join the current Board members which include:

- Braden Allenby, Vice President, Environment, Health and Safety, AT&T.
- Richard Bartlett, (NEETF Chairman) Vice Chairman, Mary Kay Holding Corporation.
- Dorothy Jacobson, Consultant.
- Karen Bates Kress, President, KBK Consulting, Inc.
- Dorothy McSweeny, (NEETF Vice Chair), Chair, DC Commission on the Arts and Humanities.
- Honorable William Sessions, former Director of the Federal Bureau of Investigation.

Additional Considerations: Great care has been taken to assure that this new appointee not only has the highest degree of expertise and commitment, but also brings to the Board diverse points of view relating to environmental education and training.

This appointment shall be for two consecutive four year terms.

FOR FURTHER INFORMATION CONTACT: C. Michael Baker, 202–564–0446, Acting Director, Office of Environmental Education, Office of Public Affairs (1704A) U.S. EPA 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Dated: February 18, 2005.

Stephen L. Johnson,

Acting Administrator.

BIO of New Member

Arthur J. Gibson, Vice President, Environmental, Health & Safety; The Home Depot, Inc.

Arthur J. Gibson is Vice President of Environmental, Health and Safety for Home Depot, Inc.

He is responsible for leading the strategy, planning processes, and the day to day functional operations of the Environmental, Health and Safety Organization.

Prior to joining The Home Depot, Art served as Senior Vice President of Corporate Environmental, Health, Safety, Security and Workers' Compensation for the R.R. Donnelley Corporation. Prior to his tenure with R.R. Donnelley, Art was with the Grumman Corporation, where he was the Corporate Director of Environmental, Health, Safety, Medical Services and Energy. Art was also an Aeronautical Design Engineer at Grumman Aerospace Corporation.

Mr. Gibson holds Bachelor's degrees in American Foreign Policy and Aeronautical Engineering from Cornell University and an MBA in International Finance from Long Island University.

Art currently resides in Atlanta, GA with his wife Patricia and their three children, Sarah, Abigail and Matthew.

[FR Doc. 05–4264 Filed 3–3–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6661–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements filed February 22, 2005, through February 25, 2005, pursuant to 40 CFR 1506.9.

EIS No. 050078, Draft EIS, AFS, NE, SD, Black-Tailed Prairie Dog Conservation and Management on the Nebraska National Forest and Associated Units, Implementation, Dawes, Sioux, Blaine, Cherry, Thomas Counties, NE and Custer, Fall River, Jackson, Pennington, Jones, Lyman, Stanley Counties, SD, Comment Period Ends: April 18, 2005, Contact: Jeffery S. Abegglen (308) 432–0300.

EIS No. 050079, Final EIS, AFS, CA, Cottonwood Fire Vegetation Management Project, Control Vegetation Competing with Conifer Seedlings, Sierraville Ranger District, Tahoe National Forest, Sierra County, CA, Wait Period Ends: April 4, 2005, Contact: Teri Banka (530) 994–3401.

EIS No. 050080, Draft EIS, FRC, TX, Ingleside Energy Center Liquefied Natural Gas (LNG) Import Terminal and San Patricio Pipeline Natural Gas Pipeline, Authorization to Construct, Install and Operate, San Patricio and Nueces Counties, TX, Comment Period Ends: April 18, 2005, Contact: Thomas Russo 1–(866) 208–3372.

EIS No. 050081, Draft EIS, AFS, OR, B & B Recovery Project, Proposed Harvest of Fire-Killed Trees, Reduction of Fuels, Planting of Tree, Deschutes National Forest, Sisters Ranger District, Jefferson and Deschutes Counties, OR , Comment Period Ends: April 18, 2005, Contact: Leslie Weldon (541) 549–7743.

EIS No. 050082, Draft EIS, FRC, CO, WY, Entrega Pipeline Project, Construction and Operation New Interstate Natural Gas Pipeline System, Right-of-Way Grant Issue by BLM, Meeker Hub and Cheyenne Hub, Rio Blanco and Weld Counties, CO, and Sweetwater County, WY, Comment Period Ends: April 18, 2005, Contact: Thomas Russo 1–(866) 208–3372

Amended Notices

EIS No. 050052, Draft EIS, FHW, MI, IN, US–131 Improvement Study, from the Indiana Toll Road (1–80/90) to a Point One Mile North of Cowling Road, U.S. Army COE Section 404 Permit, St. Joseph County, MI and Elkhart County, IN, Comment Period Ends: April 29, 2005, Contact: Abdelmoez A. Abdalla (517) 702–1820. Revision of **Federal Register** notice published on February 11, 2005: CEQ Comment Period Ending March 28, 2005, has been Extended to April 29, 2005.

Dated: March 1, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–4253 Filed 3–3–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6661–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act, as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 2, 2004 (69 FR 17403).

Draft EISs

ERP No. D–AFS–G65095–NM Rating LO, Buckman Water Diversion Project, Proposal to Divert Water from Rio Grande and San Juan-Chama Project, To Meet Water Supply Needs, Sante Fe National Forest and Taos Field Office, Sante Fe County, NM.

Summary: EPA does not object to the preferred alternative.

ERP No. D–BLM–L65471–ID Rating EC2, Fire, Fuels and Related Vegetation Management Direction Plan Amendment, Upper Snake River District (The District), Amending 12 Existing Land Use Plans, Several Counties, ID.

Summary: EPA expressed concerns about air quality and grazing impacts, and requested additional information on

acute and chronic effects of chemical treatments.

ERP No. D–FHW–E40802–MS Rating EC1, I–69 Section of Independent Utility #11 Project, Construction of Multi-Lane, Interstate Highway from Benoit to Robinsonville, US. Army COE Section 404 Permit, Mississippi River Bridge, Bolivar, Coahoma, Tunica and Sunflower Counties, MS.

Summary: EPA expressed environmental concerns about the proposed project related to water resource impacts (wetlands, streams, and floodplains), land use change/habitat loss, and refining mitigation commitments.

ERP No. D–FHW–H50002–NE Rating LO, Bellevue Bridge Study, To Improve Connectivity between the Omaha Metropolitan Area and across the Missouri River from U.S. 75 to I–29, Coast Guard Permit, NPDES Permit, U.S. Army COE

Section 10 and 404 Permits, Mills County, IA and Sarpy County, NE.

Summary: EPA does not object to the proposed project.

ERP No. D–UAF–G11053–NM Rating LO, New Mexico Training Initiative, Proposal to Modify the Training Airspace New Cannon Air Force Base (AFB), NM.

Summary: EPA does not object to the proposed action.

ERP No. D–USN–E11054–FL Rating EC2, Navy Air-To-Ground Training at Avon Park Air Force Range, To Conduct Air-to-Ground Ordnance Delivery and Training, Fleet Forces Command's Fleet Readiness Training Program (FRTP), Polk and Highlands Counties, FL.

Summary: EPA expressed environmental concerns about wetland and noise impacts.

ERP No. DA–ICC–J53004–MT Rating EC2, Tongue River Railroad Construction and Operation of the Proposed Western Alignment Tongue River III Southernmost Portion of the 41-mile Ashland to Decker Alignment, Rosebud and Bighorn Counties, MT.

Summary: EPA expressed concern about water quality, wetlands, Tribal Trust resources, and indirect/cumulative environmental impacts, and requested additional information, data, analysis, and discussion related to these issues be included in the final EIS.

Final EISs

ERP No. F–IBR–K39085–CA San Joaquin River Exchange Contractors Water Authority—2005 to 2014, Water Transfer Program, Stanislaus, San Joaquin, Merced, Madera, Fresno, San Benito, Santa Clara, Kern, and Kings Counties, CA.

Summary: EPA expressed continuing concerns about impacts on water quality, flow, and beneficial uses and the relationship to proposed water quality improvement measures.

ERP No. F–NPS–G65017–TX Rio Grande Wild and Scenic River General Management Plan, Implementation, Big Bend National Park, Brewster and Terrell Counties, TX.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–FHW–E40325–NC Western Section of the Winston-Salem Northern Beltway, U.S. 158 north to U.S. 52, TIP Nos. R–2247, Forsyth County, NC.

Summary: EPA continues to express concern due to aquatic stream habitat impacts, water supply, watershed impacts, and residential relocation impacts.

Dated: March 1, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 05–4254 Filed 3–3–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7880–9]

Integrated Risk Information System (IRIS); Announcement of 2005 Program; Request for Information

AGENCY: Environmental Protection Agency.

ACTION: Notice; announcement of IRIS 2005 program agenda and request for scientific information on human health effects that may result from exposure to chemical substances.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the IRIS 2005 agenda and requesting scientific information on health effects that may result from exposure to the chemical substances for which EPA is starting assessments this year.

The Integrated Risk Information System (IRIS) is an EPA database that contains the Agency's scientific consensus positions on human health effects that may result from exposure to chemical substances in the environment. On February 9, 2004 (69 FR 5971), EPA announced the 2004 IRIS agenda, with solicitation of scientific information from the public for consideration in assessing health effects from specific chemical substances. All assessments currently in progress or completed in 2004 are listed in this notice. This notice also provides an update on EPA's efforts to improve the IRIS database.

DATES: Please submit any scientific information in response to this notice in accordance with the instructions provided at the end of this notice by May 3, 2005.

ADDRESSES: Please submit relevant scientific information identified by docket ID number ORD–2003–0016, online at *http://www.epa.gov/edocket* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: For information on the IRIS program, contact Amy Mills, IRIS Program Director, National Center for Environmental Assessment, (mail code 8601D), Office of Research and Development, U.S. Environmental Protection Agency, Washington, DC 20460; telephone: (202) 564–3204, facsimile: (202) 565–0075; or e-mail: *mills.amy@epa.gov*.

For general questions about access to IRIS, or the content of IRIS, please call the IRIS Hotline at (202) 566–1676 or send electronic mail inquiries to *hotline.iris@epa.gov*.

SUPPLEMENTARY INFORMATION:

Background

IRIS is an EPA database containing Agency scientific positions on potential adverse human health effects that may result from exposure to chemical substances found in the environment.[1] IRIS currently provides information on health effects associated with more than 500 chemical substances.

The database includes chemical-specific summaries of qualitative and quantitative health information in support of the first two steps of the risk assessment process, *i.e.*, hazard identification and dose-response evaluation. Combined with specific

[1] EPA notes that information in the IRIS database has no preclusive effect and does not predetermine the outcome of any rulemaking. When EPA uses such information to support a rulemaking, the scientific basis for, and the application of, that information are subject to comment.

situational exposure assessment information, the information in IRIS may be used as a source in evaluating potential public health risks from environmental contaminants.

EPA's overall process for developing IRIS assessments consists of: (1) An annual **Federal Register** announcement of EPA's IRIS agenda and call for scientific information from the public on selected chemical substances; (2) a search of the scientific literature; (3) development of IRIS summaries and support documents; (4) agency review; (5) external peer review; (6) management review and approval; and (7) entry of IRIS summaries and support documents into the IRIS database (*http://www.epa.gov/iris*).

The IRIS Annual Agenda

Each year, EPA develops a list of priority chemical substances and an annual agenda for the IRIS program. EPA uses four general criteria to set these priorities: (1) EPA statutory, regulatory, or program-specific implementation needs; (2) availability of new scientific information or methodology that might significantly change the current IRIS information; (3) interest to other levels of government or the public; and (4) availability of other scientific assessment documents and only a modest additional effort would be needed to complete the review and documentation for IRIS. The decision to assess any given chemical substance hinges on available Agency resources. Availability of risk assessment guidance, guidelines, and science policy decisions may also have an effect on the timing of EPA's decision to assess a chemical substance.

Consistent with previous **Federal Register** notices announcing the annual IRIS agenda, EPA is soliciting public involvement in new assessments starting in 2005. While EPA conducts a thorough literature search for each chemical substance, there may be unpublished studies or other primary technical sources that we may not otherwise obtain through open literature searches. We would appreciate receiving scientific information from the public during the information gathering stage for the list of new assessments provided in this notice. Interested persons should provide scientific analyses, studies, and other pertinent scientific information. Also note, if you have submitted information previously to the IRIS Submission Desk, there is no need to resubmit that information. While EPA is primarily soliciting information on new 2005 assessments announced in this notice, the public may submit information on any chemical substance at any time.

This notice provides: (1) A list of IRIS assessments completed in 2004; (2) a list of IRIS assessments in progress; (3) a list of new IRIS assessments starting in 2005; (4) an update on EPA's effort to search for new scientific studies on IRIS chemicals; (5) an update on other improvements underway in the IRIS program; and (6) instructions to the public for submitting scientific information to EPA pertinent to the development of new IRIS assessments.

Assessments Completed in 2004

The following assessments were completed and entered into IRIS in 2004 and early 2005. These assessments were listed in the **Federal Register** of February 9, 2004 (69 FR 5971). All health endpoints associated with chronic exposure, cancer and noncancer, were assessed unless otherwise noted. Where information was available, both qualitative and quantitative assessments were developed.

Substance name	CAS No.
boron	7440–42–8
ethylene dibromide (1,2-dibromoethane)	106–93–4
lead (updated qualitative discussion)	7349–92–1
2-methylnaphthalene	91–57–6
perchlorate and perchlorate salts	7790–98–9 7791–03–9 7778–74–7 7601–89–0

Assessments in Progress

The following assessments are underway. Each was listed in the 2004 IRIS agenda. The status and planned milestone dates for each assessment can be found on the IRIS Track system, accessible from the IRIS database. All health endpoints due to chronic exposure, cancer and noncancer, are being assessed unless otherwise noted. For all endpoints assessed, both qualitative and quantitative assessments are being developed where information is available. Those denoted with an asterisk (*) may require additional time for analysis or peer review due to their large databases or complex assessment issues. Substances denoted with a double asterisk (**) are being evaluated for effects from acute and/or other less-than-lifetime exposure durations. These substances are part of a pilot test to evaluate the application of methods, procedures, and resource needs for adding health effects information for less-than-lifetime exposure duration to IRIS.

Substance name	CAS No.
acetaldehyde	75–07–0
acrolein**	107–02–8
acrylamide	79–06–1
acrylonitrile	107–13–1
aldicarb/aldicarb sulfoxide	116–06–3/1646–87–3
aldicarb sulfone	1646–88–4
arsenic	7440–38–2
asbestos (noncancer effects)*	1332–21–4
benzene**	71–43–2
benzo(a)pyrene	50–32–8
beryllium (cancer effects)	7440–41–7
bromobenzene	108–86–1
bromodichloromethane	75–27–4
bromoform	75–25–2
cadmium	7440–43–9
carbon tetrachloride	56–23–5
chloroethane	75–00–3
chloroform (inhalation route)	67–66–3
chloroprene	126–99–8
cobalt	7440–48–4
copper	7440–50–8
cryptosporidium	[n.a.]

Substance name	CAS No.
dibromochloromethane	124–48–1
dibutyl phthalate (chronic; less-than-lifetime** exposures)	84–74–2
1,2-dichlorobenzene	95–50–1
1,3-dichlorobenzene	541–73–1
1,4-dichlorobenzene	106–46–7
1,2-dichloroethylene	540–59–0
di(2-ethylhexyl)adipate (DEHA)	103–23–1
di(2-ethylhexyl)phthalate	117–81–7
1,4-dioxane	123–91–1
ethanol	64–17–5
ethyl tertiary butyl ether	637–92–3
ethylbenzene	100–41–4
ethylene dichloride	107–06–2
ethylene glycol monobutyl ether (cancer effects)	111–76–2
ethylene oxide (cancer effects; noncancer acute** exp.)	75–21–8
formaldehyde*	50–00–0
hexachlorobutadiene	87–68–3
hexachloro- cyclopentadiene**	77–47–4
hexahydro-1,3,5- trinitro-triazine (RDX)*	121–82–4
n-hexane	110–54–3
hydrogen cyanide	74–90–8
hydrogen sulfide**	7783–06–4
isopropanol	67–63–0
kepone	143–50–0
methanol	67–56–1
methyl tert-butyl ether (MTBE)	1634–04–4
methylene chloride	75–09–2 (dichloromethane)
mirex	2385–85–5
naphthalene (cancer effects, inhalation route)	91–20–3
nickel (soluble salts)	[n.a.—various]
nitrobenzene	98–95–3
PAH mixtures	[n.a.—various]
pentachlorophenol	87–86–5
perfluorooctanoic acid—ammonium salt (PFOA)	3825–26–1
perfluorooctane sulfonate—potassium salt (PFOS)	2795–39–3
phosgene (chronic; acute** exposure)	75–44–5
polybrominated diphenyl ethers (tetra, penta, hexa, deca-PDEs)	[n.a.—various]
polychlorinated biphenyls (PCBs) (noncancer endpoints)	1336–36–3
propionaldehyde	123–38–6
refractory ceramic fibers	[n.a.]
styrene	100–42–5
2,3,7,8-TCDD (dioxin)*	1746–01–6
tetrachloroethylene (perchloroethylene)	127–18–4
tetrahydrofuran	109–99–9
thallium	7440–28–0
toluene	108–88–3
trichloroacetic acid	76–03–9
1,1,1-trichloroethane (chronic; less-than-lifetime** exp.)	71–55–6
trichloroethylene*	79–01–6
1,2,3-trichloropropane	96–18–4
2,2,4-trimethylpentane	540–84–1
uranium compounds	[n.a.—various]
vinyl acetate	108–05–4
zinc and compounds	7440–66–6

IRIS summaries and support documents for all substances listed as on-going assessments in 2005 will be provided on the IRIS Web site at *http://www.epa.gov/iris* as they are completed. This publicly available Web site is EPA's primary location for IRIS documents. In addition, external peer review drafts of IRIS assessments can be found during their peer review periods via the Recent Additions page of the IRIS Web site. Interested parties should check the ''Recent Additions'' page frequently for the availability of these drafts.

Information Requested on New Assessments for 2005

EPA will continue building and updating the IRIS database. The Agency recognizes that a number of the assessments on IRIS need updating to incorporate new scientific information and methodologies. Further, many additional substances are candidates for adding to IRIS. However, due to limited resources in the Agency to address the spectrum of needs, priorities are set based on specific considerations.

EPA developed the list of priority chemicals for 2005 by sorting chemical nominations from the EPA programs and the public according to the following considerations: (1) Multiple nominations were received for a chemical from EPA programs and in response to the August 2003 **Federal Register** notice requesting public nominations (68 FR 48359); (2) nominations demonstrated more than one of the following: (a) Statutory, regulatory or programmatic need, (b) interest to other levels of government or the public, and (c) availability of other assessment documents for use in developing an IRIS assessment. To

refine the list of nominations, high priority was given to EPA programs' priority nominations; (3) nominations for which significant new health effects information is available on which to base an assessment; and (4) nominations for which Agency resources are available to conduct the assessment. Available health effects information and EPA resources are considered critical for selecting a chemical for assessment.

Based on EPA's prioritization process described above, the following IRIS health assessments have been selected for initiation in 2005. The primary reasons for selecting each chemical substance are indicated. ''CAA need'' refers to EPA's responsibilities under the Clean Air Act; ''CERCLA need'' refers to EPA's responsibilities under the Comprehensive Environmental Response, Compensation and Liability Act, or Superfund. ''RCRA need'' refers to EPA's responsibilities under the Resource Conservation and Recovery Act.

The Agency is requesting information from the public for consideration in the development of these assessments. For all endpoints assessed, both qualitative and quantitative assessments will be developed where information is available.

Substance name	CAS No.	Reason for selection
butyl benzyl phthalate	85–68–7	CERCLA site cleanup and RCRA need. Newer scientific information is available to update older assessment.
cerium	1306–38–3	CAA need. Scientific information is available to develop a first IRIS assessment.
hexachloroethane	67–72–1	CERCLA site cleanup need. Newer scientific information is available to update older assessment.
2-hexanone	591–78–6	CERCLA site cleanup and RCRA need. Scientific information is available to develop a first IRIS assessment.
naphthalene (non-cancer)	91–20–3	CERCLA site cleanup need. Newer scientific information is available to update older assessment.
platinum	7440–06–4	CAA need. Scientific information is available to develop a first IRIS assessment.
1,1,2,2-tetrachloroethane	79–34–5	CAA need. Newer scientific information is available to update older assessment.

Systematic Update of the IRIS Database

While the annual prioritization process responds to the needs expressed by IRIS users, EPA is also systematically updating the IRIS database. The IRIS Program is conducting a screening-level review of the available scientific literature for all chemicals in the IRIS database that are not under active reassessment. The purpose of EPA's screening level review is to reach preliminary determinations regarding the likelihood that a full reassessment based on an evaluation of new health effects literature could potentially result in significant changes to existing toxicity values or cancer weight-of-evidence designations. The process consists of a preliminary search and review of the literature through standard toxicological bibliographic databases (titles and abstracts) and selected literature compilations to identify new major studies that have become available since the existing IRIS assessment was completed. Screening-level reviews were completed for 460 chemicals in the IRIS database in 2004, that is, essentially all chemicals in the database with the exception of those that are on the current IRIS agenda and are being fully reassessed. For the chemicals reviewed, no major new health effects studies were found that would be likely to significantly change existing toxicity values for about 63% of the chemicals. These findings have been added to the ''EPA Review and Documentation'' sections of individual IRIS Summaries. The literature screen has been re-initiated in 2005 to continuously check the availability of new literature and note findings in the IRIS database.

As planned and discussed in the previous annual agenda, EPA is using findings from this literature screen as a basis for systematically updating IRIS by performing a more in-depth review of the extant health data. This more in-depth review is verifying results from the IRIS literature screening review. For those chemicals confirmed to be without new health information to change the existing assessment, EPA is updating IRIS Summaries to indicate that the scientific information upon which the assessment was based is still current. Twelve assessments were updated with this information in 2004, 30 are in progress for 2005.

We continue to request the submission of any scientific information that you would like EPA to consider in confirming the results of the literature screening review and literature screen verification. You can locate the results for a chemical assessment on the IRIS Web site (*http://www.epa.gov/iris*) by selecting the specific IRIS Summary of interest.

Other Improvements to the IRIS Program—Update

As discussed in the **Federal Register** notice announcing the 2004 agenda, EPA has taken steps to improve the IRIS program and its products through a series of program reforms. EPA has expanded its central IRIS Staff to better manage the program and ensure scientific quality and consistency. In addition, external scientific peer reviews are being conducted by panel meetings rather than by mail reviews. This step is being taken to provide the best possible scientific review of each assessment. Further, EPA is now positioning the external peer review at the end of each IRIS assessment review process, strengthening the role of peer review in informing the outcome of the process. A public comment period is now standard practice prior to panel peer review meetings, and the meetings are open to the public for observation. These steps have been taken to facilitate scientific input from the public and to make the peer review process more transparent. These steps require extra time to implement, and therefore will result in somewhat longer time frames for completion of IRIS assessments.

As mentioned previously in this notice, in 2004 EPA implemented a new publically available tracking system for IRIS assessments in progress. IRIS Track provides the status and planned milestones in the development and review process for each assessment. The system was put in place to provide more information and transparency for IRIS users. IRIS Track is kept continually updated. It can be accessed from the IRIS home page.

General Information

A. How Can I Get Copies of Related Information?

EPA has established an official public docket for this action under Docket ID No. ORD 2003–0016. The official public docket is the collection of materials that is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system. EPA Dockets at *http://www.epa.gov/edocket/* may be used to submit or view public submissions, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public submissions, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the submission contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Scientific Information?

Scientific information may be submitted as provided in the **ADDRESSES** section. Please submit scientific information within 60 days of this notice, provide all information (studies, reports, articles, etc.) you wish to submit. Please ensure that your submissions are submitted within the specified period. Information received after the close of the submission period will be marked late, and may be considered if time permits. Your submission should specify the chemical substance to which your information pertains, CASRN (Chemical Abstract Service Registry Number), and the topic or aspect of the assessment that is being addressed (*e.g.*, carcinogenicity, mode of action). In addition, when you submit results of new health effects studies concerning existing substances on IRIS, you should include a specific explanation of how the study results could change the information in IRIS. All citations should be listed in scientific citation format, that is, author(s), title, journal, and date. Include names, addresses and telephone numbers of person(s) to contact for additional information.

If you submit electronic information, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your submission and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the information and allows EPA to contact you in case EPA cannot read your information due to technical difficulties or needs further information on the substance of your submission. Any identifying or contact information provided in the body of submitted information will be included as part of the submission information that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your information due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your information.

Your use of EPA's electronic public docket to submit information to EPA electronically is EPA's preferred method for receiving submissions. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your submission. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send e-mail directly to the Docket without going through EPA's electronic public docket, your e-mail address is automatically captured and included as part of the submission that is placed in the official public docket, and made available in EPA's electronic public docket.

You may also request to augment your submission with a scientific briefing to EPA staff. Such requests should be made directly to Amy Mills, IRIS Program Director (*see* **FOR FURTHER INFORMATION CONTACT**).

Dated: February 28, 2005.

Peter Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 05–4275 Filed 3–3–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2005–0001; FRL–7880–2]

Modification of the RCRA, Superfund & EPCRA Call Center; Public Information Distribution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Office of Solid Waste and Emergency Response (OSWER) is today announcing significant changes to the operation of the RCRA, Superfund & EPCRA Call Center (Call Center). The Call Center will terminate support of the Resource Conservation and Recovery Act (RCRA) and Underground Storage Tanks (UST) programs at close of business on Thursday, March 31, 2005. Individuals seeking information on the RCRA and UST programs after that date will be directed to EPA's Headquarters' and Regional Offices' Web sites for these programs, and other sources as described in the **SUPPLEMENTARY INFORMATION** section.

The Call Center will continue as before to respond to public inquiries about the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund), including the Small Business Liability Relief and Brownfields Revitalization Act (SBLRBRA, or Brownfields); the Emergency Planning and Community Right-to-Know Act (EPCRA), including the Toxic Release Inventory (TRI) program; the Superfund Amendments Reauthorization Act (SARA) Title III; the Clean Air Act (CAA) Section 112(r); and the Oil Pollution Control Act (OPA). Call Center access will remain unchanged for these programs.

DATES: The Call Center will terminate all support of the RCRA and OUST programs at close of business on Thursday, March 31, 2005.

ADDRESSES: EPA has established a docket for this notice under Docket ID RCRA–2005–0001. Written

correspondence concerning this notice can be forwarded in hard copy to the OSWER Docket (5305T), EPA Docket Center, 1200 Pennsylvania Ave., NW., Washington, DC 20460, or electronically via EDOCKET. Follow the instructions provided in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Scott Maid, Project Officer, at *maid.scott@epa.gov*, at 703–308–8029, or at Office of Solid Waste (5305W), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The RCRA, Superfund and EPCRA Call Center has provided program information to callers on a wide variety of topics created under the authorities of the Resource Conservation and Recovery Act (RCRA), which includes the Underground Storage Tank (UST) program; the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund); the Emergency Planning and Community Right-to-Know Act (EPCRA); the Superfund Amendments Reauthorization Act (SARA) Title III; the Clean Air Act (CAA) Section 112(r); and the Oil Pollution Control Act (OPA).

As of April 1, 2005, RCRA program information will only be available to the public through the Internet at *http://www.epa.gov/osw.* The Call Center will no longer answer any RCRA questions.

To make it easier for people to find sources of RCRA information, the Office of Solid Waste (OSW) has compiled a complete list of phone numbers and waste program Web sites maintained by EPA Regional offices and state environmental agencies to help users locate site-specific information on RCRA facilities within their states. This compilation is found at *http://www.epa.gov/epaoswer/osw/comments.htm.*

The site also provides links to the RCRA OnLine database (a searchable compilation of OSW memos and guidance documents) and to an on-line order form (*http://www.epa.gov/epaoswer/osw/publicat.htm*) for OSW publications. OSW publications may also be ordered by calling the National Service Center for Environmental Publications toll-free at 800–490–9198.

The OSW Web site also includes a link to a database of Frequently Asked Questions (FAQs) that will allow any user to search for RCRA information from a comprehensive set of FAQs. If the existing FAQs do not respond to the user's request, the user can use the system to transmit the question to OSW for resolution.

Similarly, as of April 1, 2005, callers will no longer be able to receive information about EPA's UST program through the Call Center. For information about the UST program and leaking UST program, see EPA's Web site at *http://www.epa.gov/oust/* for general information about the Federal tank program; answers to frequently asked questions; laws, regulations, and policy guidance about the tank program; publications and compliance help for states as well as tank owners and operators; and links to regional, state, local, and tribal tank programs. To order publications developed by EPA's Office of Underground Storage Tanks, please call EPA's toll-free number for its publications distribution center at 800–490–9198.

EPA has established an official public docket for this action under Docket ID No. RCRA–2005–0001. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Environmental Protection Agency, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m. Mondays through Fridays, excluding legal holidays. The telephone number for the EPA Docket Center reading room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0272.

An electronic version of the public docket is available through EDOCKET. You may use EDOCKET at *http://www.epa.gov/edocket* to submit or view public comments, access the index listing of the contents of the official docket, and to access those documents in the public docket that are available electronically. Publicly available docket materials that are not available electronically may be viewed at the docket facility identified above. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Dated: February 24, 2005.

Thomas P. Dunne,

Deputy Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 05–4265 Filed 3–3–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0067; FRL–7701–8]

Sulfuryl Fluoride; Notice of Filing a Pesticide Petition to Establish Tolerances for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0067, must be received on or before April 4, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Suku Oonnithan, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–605–0368; e-mail address:*oonnithan.suku@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

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

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0067. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. 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.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0067. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2005–0067. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0067.

3. *By hand delivery or courier*. Deliver your comments to: Public Information

and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0067. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 25, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

PP 3F6573

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

EPA has received a pesticide petition (PP 3F6573) from Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of:

1. *Fluoride in or on the following raw agricultural commodities:* Animal feed at 130 parts per million (ppm), beef, meat at 40 ppm; cheese, post harvest at 5 ppm; cocoa bean, post harvest at 12 ppm; coconut, post harvest at 40 ppm; coffee, post harvest at 12 ppm; cottonseed, post harvest at 13 ppm; egg at 850 ppm; ginger, post harvest at 13 ppm; grain, cereal, forage, fodder and straw group 16, post harvest at 130 ppm; grass, forage, fodder and hay group 17, post harvest at 130 ppm; ham at 20 ppm; herbs and spices group 19, post harvest at 50 ppm; milk at 3 ppm; nut, pine, post harvest at 10 ppm; other processed food at 70 ppm; peanut, post-harvest at 13 ppm; rice flour, post harvest at 98 ppm; and vegetable, legume, group 06, post harvest at 6 ppm.

2. *Sulfuryl fluoride in or on the following raw agricultural commodities:* Animal feed at 2.0 ppm; beef, meat at 0.01 ppm; cheese, post harvest at 0.5 ppm; cocoa bean, post harvest at 0.8 ppm; coconut, post harvest at 1.0 ppm; coffee, post harvest at 0.8 ppm; cottonseed, post harvest at 0.2 ppm; egg at 0.7 ppm; ginger, post harvest at 0.2 ppm; grain, cereal, forage, fodder and straw group 16, post harvest at 2.0 ppm; grass, forage, fodder and hay group 17, post harvest at 2.0 ppm; ham at 0.01 ppm; herbs and spices group 19, post harvest at 0.3 ppm; milk at 1.5 ppm; nut, pine, post harvest at 3.0 ppm; other processed food at 1.2 ppm; peanut, post-harvest at 0.2 ppm; rice flour, post harvest at 0.08 ppm; and vegetable, legume, group 06, post harvest at 0.02 ppm.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of sulfuryl fluoride is adequately understood for the purposes of this tolerance. Potential residues of sulfuryl fluoride and its degradation product fluoride and sulfate were investigated. Residues of sulfuryl fluoride in treated commodities are transient and rapidly decrease to very low (parts per billion (ppb)) or non-detectable levels. Residues of fluoride and sulfate resulting from the fumigation of commodities with sulfuryl fluoride were measurable and predictable. Sulfate as a terminal residue of sulfuryl fluoride is not considered of toxicological significance due to its natural abundance and pervasiveness in living systems.

2. *Analytical method.* Analytical methods have been developed and validated to determine the residues of sulfuryl fluoride and fluoride in the listed commodities. The sulfuryl fluoride method is based on gas chromatography/electron capture detector (GC-ECD) with a limit of quantitation (LOQ) of 8.0 ppb in grains and grain processed products and 4.0

ppb in all other commodities. The fluoride method utilizes a fluoride ion specific electrode. The fluoride ion method was validated with an LOQ of 0.5 ppm in grains and grain processed products and 1.0 ppm in all other commodities.

3. *Magnitude of residues.* Cereal and small grains and their processed products were treated with sulfuryl fluoride at target doses ranging from 200 mg hr/L to 1500 mg hr/L. Sulfuryl fluoride dissipated rapidly with residues at less than the LOQ (with one exception), immediately following the 24-hr aeration. One sample (white corn) at the 1,500 mg hr/L dose showed a residue of 0.019 ppm after the 24-hr aeration interval. Fluoride ion residues measured in whole grains following the fumigations ranged from less than the LOQ to 1.8 ppm (200 mg hr/L dose level) and from 1.0 to 7.5 ppm (1,500 mg hr/L dose level). The processing of sulfuryl fluoride-fumigated whole grain wheat containing fluoride ion at 1.19 ppm yielded flour, shorts, bran, middlings, impurities, and germ containing fluoride ion at 0.446 ppm, 1.50 ppm, 3.05 ppm, 0.718 ppm, 1.07 ppm, and 5.74 ppm, respectively. The processing of fumigated whole grain corn containing fluoride ion at 1.76 ppm produced flour, meal, grits, impurities, containing fluoride ion at 1.29 ppm, 1.37 ppm, 0.826 ppm, and 9.67 ppm. Fluoride ion was below the LOQ (0.3 ppm) in corn oil (dry- and wet-milled) and wet-milled starch. Fluoride ion residues were consistently higher in processed products than in the whole grains. Fluoride ion residues in mill-fumigated processed products (germ, flour, meal) ranged from 7 to 90 ppm, with residues generally following the order of wheat germ being greater than wheat flour, being greater than corn flour, being greater than corn meal. Finished food products and key ingredients were fumigated with sulfuryl fluoride (SF) in controlled exposures to determine the magnitude of sulfuryl fluoride and terminal fluoride anion. Most of the finished food products were fumigated in their retail packaging and also in open configuration (removed from packages) to compare residue levels resulting from those two packaging configurations. Portions (typically 200 - 2,000g) of each commodity were exposed in single, 24-hr fumigations to a SF concentration of 62.5 mg/L (CT Product of 1,500 mg hr/L), at an exposure temperature of 30 C. Following fumigation and aeration, the commodities were analyzed to determine residue levels of sulfuryl fluoride and fluoride anion. The tested food commodities were exposed in a combination of packaged and open configuration. Sulfuryl fluoride was not present above the limit of quantitation (4 ppb) in twelve commodities fumigated in open configuration, nor in three commodities fumigated in packaged configuration. Only five of the fumigated commodities had SF residue levels that exceeded 1,000 ppb with the highest level being 1,864 ppb. The SF concentrations rapidly decayed in the tested commodities between post-fumigation Day 1 and Day 2. Fluoride ion was not present above the LOQ (1 ppm) in four commodities fumigated in open configuration, nor in seven commodities fumigated in packaged configuration. Thirty-five (of the 39) commodities fumigated with SF in the open configuration had quantifiable levels of fluoride which ranged from 1.03 to 754 ppm. The highest fluoride levels were 754 ppm in powdered eggs. Of the 20 commodities fumigated in packaged configuration, 13 had quantifiable fluoride levels, but the fluoride concentrations were less than 12 ppm for all package-fumigated commodities with one exception. The comparative results of fluoride residues in commodities fumigated under packaged versus open fumigation conditions indicate that the packaging in most cases does function as a barrier that isolates the contents of the package from external SF atmospheres or at least attenuates the inner-package concentration of SF to which the commodities are exposed.

On the basis of the residues of fluoride and sulfuryl fluoride that were evaluated, the tolerances identified are supported for the listed commodities.

B. Toxicological Profile

1. *Acute toxicity.* The acute LC50 for sulfuryl fluoride is 642 ppm 1,088 milligram/kilogram body weight (mg/kg/bwt) for CD-1 mice exposed for four hours.

2. *Genotoxicity.* Genetic toxicity did not occur when sulfuryl fluoride was tested in multiple *in vivo* and *in vitro* tests.

3. *Reproductive and developmental toxicity.* Sulfuryl fluoride did not have any effects on reproductive parameters at dose levels that induced treatment related effects in parental rats and rabbits. In addition, a teratogenic potential for sulfuryl fluoride was not demonstrated in either rats or rabbits at dose levels that induced maternal toxicity.

4. *Subchronic toxicity.* Several 2–week repeated dose inhalation studies indicate for mice a no observed adverse effect level (NOEL) of 30 ppm; for rat, rabbit, and beagle dog a NOEL of 100 ppm.

5. *Chronic toxicity.* The lowest reported chronic NOEL for sulfuryl fluoride is 5 ppm based on a 2–year inhalation study with Fischer 344 rats and the parental NOEL in a two-generation rat reproduction study. There was no evidence of carcinogenicity in 2–year rat and 18–month mouse studies.

6. *Animal metabolism.* Rats fed a diet that had been fumigated by sulfuryl fluoride at a rate of 2 lb/1,000 cu ft (containing fluoride levels of 19 ppm above the control level of 36 ppm) for 66 days experienced an increase in the fluoride content of their bones. The National Research Council in their 1993 report on fluoride concluded that fluoride is readily absorbed by the gut and rapidly becomes associated with teeth and bones. The remaining fluoride is eliminated almost exclusively by the kidneys with the rate of renal clearance related directly to urinary pH.

7. *Metabolite toxicology.* Clinical symptoms of acute fluoride poisoning in humans are characterized by nausea, vomiting, diarrhea, abdominal pain, and paresthesia. The frequently cited ''probably toxic dose,'' the dose which should trigger therapeutic intervention and hospitalization, is 5 mg/kg/bwt calculated for the lowest third percentile of the infant population. Five to 10 grams of sodium fluoride (NaF) is considered the certainly lethal dose (CLD) for a 70 kg adult (32 to 64 mg fluoride per kg body weight). One-quarter of the CLD can be ingested without producing serious acute toxicity and is known as the safely tolerated dose, i.e., 8 to 16 mg of fluoride per kg of body weight. The Council on Dental Therapeutics of the American Dental Association recommends that ''no more than 264 mg of NaF (120 mg F) be dispensed at any one time'' in dental treatments to prevent the accidental poisoning of an infant weighing as little as 10 kilograms. The U.S. EPA (Cryolite Reregistration Eligibility Decision [RED], 8/96) determined a Maximum Concentration Limit Goal (MCLG) of 0.114 mg/kg/day for fluoride which provides protection from any known or anticipated adverse health effects. The MCLG has been reviewed and supported by the Surgeon General. The National Toxicology Program (NTP) has concluded that there was ''no evidence'' of carcinogenic activity in male or female mice administered sodium fluoride in drinking water for 2 years.

8. *Endocrine disruption.* There is no evidence from any studies to suggest that sulfuryl fluoride or fluoride are endocrine disrupters.

C. Aggregate Exposure

1. *Dietary exposure*. The Dietary Exposure Evaluation Model (DEEM), version 7.76, of Novigen Sciences, Inc. was used to estimate the dietary exposure to the U.S. population and critical sub-populations resulting from the use of sulfuryl fluoride under the conditions proposed. The highest potential chronic exposures to sulfuryl fluoride was to children ages 1 to 6 years resulting from the consumption of treated commodities totaling 0.00009 mg/kg/bwt/day. Likewise, the highest potential chronic exposure to fluoride was to children ages 1 to 6 years with a highest estimated exposure of 0.005 mg/kg/bwt/day.

i. *Food*. Food tolerances as inorganic fluorine compounds exist to support the uses of Cryolite (insecticide) and ProFume on various food and feed commodities in the United States. The U.S. EPA, in the 2004 ProFume registration decision, conservatively estimates that the dietary exposures to fluoride due to all sources and routes (including the fluorination of water and the potential for fluoride residues resulting from the uses of Cryolite) could be as high as 0.0397 mg/kg/bwt/day. No toxicological endpoint attributable to a single exposure was identified in the available toxicology studies on sulfuryl fluoride or inorganic fluoride that would be applicable for an acute dietary exposure.

ii. *Drinking water*. There is no anticipated exposure of sulfuryl fluoride to drinking water. As a public health tool to aid in the prevention of dental caries, fluoride is added to some domestic water supplies at generally 0.8 to 1.0 ppm.

2. *Non-dietary exposure*. Sulfuryl fluoride (as Vikane specialty gas fumigant) is presently used to fumigate homes and other structures to control wood infesting insects. The existing Vikane use patterns and exposed populations are not expected to overlap with the intended post-harvest uses of ProFume.

D. Cumulative Effects

The primary degradation product of sulfuryl fluoride is fluoride. The toxicity of fluoride in various forms has been extensively reviewed and is used as an additive in treated water supplies, toothpastes, mouth rinses, and other treatments for the prevention of dental caries. It is also prescribed in therapeutic amounts for the treatment of osteoporosis. Fluoride is naturally present in both food and water in varying amounts, and has been added to public water supplies to fight dental caries. The recommended concentration of fluoride (usually as fluorosilicic acid) in treated water supplies is 0.8 to 1.0 ppm. The Third Report on Nutrition Monitoring in the United States says that ''Food contributes only small amounts of fluoride and monitoring the diet for fluoride intake is not very useful for current public health concerns. The sub-population most susceptible to fluoride is children. For this reason a number of studies have attempted to quantify the fluoride intake from a variety of sources. The total daily intake of fluoride from water (used to prepare formula, juices, and other foods) for infants ages birth to 9 months ranged to 1.73 mg with means from 0.29 to 0.38 mg. Assuming a body weight of 10 kg, these amounts are equivalent to 0.03 to 0.04 mg/kg/day. These levels of dietary exposure in combination with the potential dietary exposures that the proposed uses of ProFume would represent (chronic dietary exposures of 0.005 mg/kg/bwt/day) are considerably lower than the U.S. EPA MCLG for fluoride of 0.114 mg/kg/bwt/day.

E. Safety Determination

1. *U.S. population*. Aggregate risk from exposure to sulfuryl fluoride would be minimal because of its rapid dissipation from any fumigated commodity and because it is not expected to be present at the time of food consumption. The sulfuryl fluoride residues in fumigated foods are expected to be non-detectable at the point of food consumption. Furthermore, if residues were considered as high as what is found immediately following the 24 hour aeration period, the Margin of Exposure to the most sensitive population (children) is estimated to be greater than 150,000-fold for chronic exposures. Exposure to fluoride, the residue of interest for sulfuryl fluoride, can occur from foods, water, and dental treatments. The additional fluoride residues in some commodities fumigated with sulfuryl fluoride are indistinguishable from the natural levels of fluoride already present and would therefore also fall within the U.S. EPA Threshold of Regulation Policy. Alternatively, fluoride in other commodities are expected to contribute to the fluoride that is ingested, but at levels far below other sources, especially treated water and dentrifices. Chronic exposure to fluoride resulting from the proposed uses of ProFume (0.005 mg/kg/day) is much lower than the U.S. EPA's MCLG of 0.114 mg/kg/bwt/day calculated for exposure to fluorinated water. In addition, there is no directly applicable scientific documentation of adverse medical effects at levels of fluorine below 0.23 mg/kg/day.

2. *Infants and children*. Chronic exposure to fluoride from the consumption of ProFume treated commodities would be approximately 0.005 mg/kg/day for a child age 1 to 6 years. This value is much lower than the U.S. EPA MCLG of 0.114 mg/kg/bwt/day calculated for exposure to fluorinated water.

F. International Tolerances

There is no Codex maximum residue level established for residues of fluoride on any food or feed crop.

[FR Doc. 05–4281 Filed 3–3–05; 8:45 am

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7875–9]

Draft Final Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Final Recipient Guidance)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Agency guidance.

SUMMARY: EPA's Office of Civil Rights is soliciting comments on the Draft Final Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Final Recipient Guidance). This guidance significantly revises the previous Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Recipient Guidance) issued for public comment in June 2000. The revisions made in this document reflect and include public involvement considerations suggested in comments the Office of Civil Rights (OCR) received on the Draft Recipient Guidance, at public participation sessions OCR held in various states over the last two years, and from other public involvement-related discussions and information. This guidance has been developed for recipients of EPA assistance that implement environmental permitting programs. It discusses various approaches and suggests tools recipients may wish to use to help enhance the public involvement aspects of their current permitting programs and reduce potential issues related to Title VI of the Civil Rights Act of 1964 (Title VI) and EPA's regulations implementing Title VI.

DATES: Comments on this draft final guidance must be submitted on or before 30 days from the date of this publication in the **Federal Register**. EPA will review all timely comments and determine if revisions to the guidance are necessary.

ADDRESSES: Written comments on the guidance document should be mailed to: Title VI Recipient Guidance, U.S. Environmental Protection Agency, Office of Civil Rights (1201A), 1200 Pennsylvania Avenue NW., Washington, DC 20460, or submitted to the following e-mail address: *civilrights@epa.gov.* Please include your name, address and optionally, your affiliation.

FOR FURTHER INFORMATION CONTACT: Karen Randolph, U.S. Environmental Protection Agency, Office of Civil Rights (1201A), 1200 Pennsylvania Avenue NW., Washington, DC 20460–1000, telephone (202) 343–9679.

SUPPLEMENTARY INFORMATION:

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B. Draft Final Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs

A. Preamble

Today's **Federal Register** document contains the guidance document entitled, the Draft Final Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Final Recipient Guidance). It offers recipients [1] of U.S. Environmental Protection Agency (EPA) assistance[2] that implement environmental permitting programs suggestions on public involvement approaches they may use to help enhance their current permitting programs to better address potential issues related to Title VI of the Civil Rights Act of 1964, as amended, (Title VI) and EPA's Title VI implementing regulations.[3] The Draft Final Recipient Guidance addresses and summarizes major public involvement considerations suggested in comments EPA's Office of Civil Rights (OCR) received on the Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Recipient Guidance), comments and suggestions stakeholders made at public participation sessions OCR held in various states in 2003–2004, and other public involvement-related resources. This Draft Final Recipient Guidance will replace the Draft Recipient Guidance which was issued in June 2000.[4] Much of the information in the Draft Final Recipient Guidance is also based on EPA's commitment to early and meaningful public involvement throughout the entire permitting process.

Entities applying for EPA financial assistance submit assurances with their applications stating that they will comply with the requirements of EPA's regulations implementing Title VI with respect to their programs or activities.[5] When the recipient receives EPA assistance, they accept the obligation to comply with EPA's Title VI implementing regulations. Persons, or their authorized representatives, who believe Federal financial assistance recipients are not administering their programs in a nondiscriminatory manner may file administrative complaints with EPA or other relevant Federal agencies. The complaint must be filed within 180 calendar days of a particular action taken by the recipient (such as the issuance of an environmental permit) that allegedly has a discriminatory purpose or effect.[6]

The Draft Recipient Guidance was published concurrently with the Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigation Guidance) [7] in June 2000. Prior to issuing the Draft Recipient Guidance, EPA considered public input, the work of the Title VI Implementation Advisory Committee of EPA's National Advisory Council for Environmental Policy and Technology (NACEPT),[8] the work of the Environmental Council of States (ECOS),[9] particularly its October 9, 1998 draft Proposed Elements of State Environmental Justice Programs, and input from available state environmental justice programs. The Draft Recipient Guidance discussed approaches to complaints alleging discrimination during the public participation portion of the permitting process, as well as complaints alleging discriminatory human health effects, environmental effects and adverse disparate impacts resulting from the issuance of permits. The Draft Recipient Guidance also discussed how these approaches could be used to address concerns before the filing of complaints. The Draft Revised Investigation Guidance discussed how OCR would process complaints alleging adverse disparate health impacts from the issuance of environmental permits. Both documents discussed issues regarding disparate and adverse impacts. To avoid redundancy, OCR decided that the Final Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Final Recipient Guidance) would only focus on approaches recipients can use to enhance the public involvement portion of their permitting programs. Discussions on disparate and other adverse impacts will be included in the Revised Investigative Guidance which may be finalized at a later date. Today, EPA is issuing the Draft Final Recipient Guidance.

B. Draft Final Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs

I. Introduction
A. Purpose of this Guidance

[1] 'Recipient' is defined as ''any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.'' 40 CFR 7.25.

[2] EPA assistance is defined as ''any grant or cooperative agreement, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which EPA provides or otherwise makes available assistance in the form of: Funds; Services of personnel; or Real or personal property or any interest in or use of such property, including Transfers or leases of such property for less than fair market value or for reduced consideration; and Proceeds for a subsequent transfer or lease of such property if EPA's share of its fair market value is not returned to EPA.''

[3] Title VI of the Civil rights Act of 1964, Pub. L. 88–352, 78 Stat. 241 (codified as amended at 42 U.S.C. 2000d to 2000–7); 49 CFR Part 7.

[4] 65 Fed. Reg. 39655 (2000).

[5] 40 CFR 7.80, EPA Form 4700–4 and Standard Form 424.

[6] The filing or acceptance for investigation of a Title VI complaint does not suspend an issued permit. Title VI complaints concern the programs and activities being implemented by Federal financial assistance recipients, and any EPA investigation of such a complaint primarily concerns the actions of recipients rather than permittees. While a particular permitting decision may act as a trigger for a complaint, allegations may involve a wider range of issues or alleged adverse disparate impacts within the legal authority of recipients.

[7] 65 FR 39650 (2000).

[8] NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and recommendations to the Administrator of EPA on a broad range of environmental policy, technology, and management issues regarding new strategies that the Agency is developing. The Council is a proactive, strategic panel of experts that identifies emerging challenges facing EPA and responds to specific charges requested by the Administrator and the program office managers.

[9] The mission of ECOS involves championing the role of the States in environmental protection and articulating state positions to Congress, federal agencies and the public on environmental issues. This mission is often advanced by writing letters, making presentations, and working in coalition with other groups to advocate on behalf of the states on environmental matters.

B. Title VI of the Civil Rights Act of 1964
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IV. Evaluating Approaches for Meaningful Public Involvement
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VII. Additional Resources

I. Introduction

A. Purpose of this Guidance

This guidance is written for recipients [10] of U.S. Environmental Protection Agency (EPA) assistance [11] that administer environmental permitting programs. It offers suggestions on approaches and ways to address situations that might reduce the likelihood of the filing of complaints alleging public involvement violations of Title VI of the Civil Rights Act of 1964, as amended (Title VI) [12] and EPA's Title VI implementing regulations.[13] The approaches discussed in this guidance may be used to create new public involvement activities or to enhance existing public involvement activities that address allegations of discriminatory public participation practices during the permitting process.

This is a guidance document, not a regulation. This document offers suggestions to recipients about enhancing public involvement processes in environmental permitting, and addressing potential Title VI issues before complaints arise. Recipients remain free to use approaches other than the ones suggested here. In addition, EPA recipients may consider other approaches and ideas, either on their own or at the suggestion of interested parties. Interested parties are free to raise questions and objections regarding this guidance and the appropriateness of using these recommendations in a particular situation, and EPA will consider whether the recommendations are appropriate in that situation. This document does not change or act as a substitute for any legal requirements. Rather, the sources of authority and requirements for Title VI programs are the relevant statutory and regulatory provisions.

B. Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin under any program or activity of a Federal financial assistance recipient. Title VI itself prohibits intentional discrimination. However Congress directed that its policy against discrimination by recipients of Federal assistance be implemented, in part, through administrative rulemaking. Since 1964, regulations promulgated by Federal agencies implementing Title VI have uniformly prohibited conduct or actions by a recipient which have the effect of discriminating on the basis of race, color or national origin. Title VI ''delegated to the agencies in the first instance the complex determination of what sorts of disparate impacts upon minorities constituted sufficiently significant social problems, and were readily enough remediable, to warrant altering the practices of the Federal grantees that had produced those impacts.'' [14]

EPA initially issued Title VI regulations in 1973 and revised them in 1984. Applicants for EPA financial assistance must submit an assurance with their application stating they will comply with the requirements of EPA's regulations implementing Title VI with respect to their programs or activities.[15] Applicants must also adopt grievance procedures that assure the prompt and fair resolution of complaints which allege violations of EPA's Title VI regulations.[16] When an applicant receives EPA assistance, they may not issue permits that are intentionally discriminatory, or use ''criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, or national origin.'' [17] Persons, or their authorized representatives, who believe Federal financial assistance recipients are not administering their programs in a nondiscriminatory manner may file administrative complaints with EPA or other relevant Federal agencies. The complaint must be filed within 180 calendar days of a particular action taken by the recipient (such as the issuance of an environmental permit) that allegedly has a discriminatory purpose or effect.[18] The primary means of enforcing compliance with Title VI is through voluntary compliance agreements. Suspension or termination of funding is a means of last resort.

Executive Order 12250 directs Federal agencies to issue appropriate Title VI implementing directives, either in the form of policy guidance or regulations consistent with requirements prescribed by the Attorney General.[19] This guidance was developed as a result of the nature of Title VI complaints received in EPA's Office of Civil Rights coupled with requests for guidance from state and local agencies. This guidance focuses on public involvement approaches recipients may use to help reduce the likelihood of the public filing Title VI complaints.

C. EPA's Guiding Principles for Title VI for the Recipient Guidance

To ensure stakeholder involvement in the development of the Draft Recipient Guidance, EPA established a Title VI Implementation Advisory Committee

[10] Any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, entity, or person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. 40 CFR 7.25.

[11] EPA assistance is defined as ''any grant or cooperative agreement, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which EPA provides or otherwise makes available assistance in the form of: Funds; Services of personnel; or Real or personal property or any interest in or use of such property, including Transfers or leases of such property for less than fair market value or for reduced consideration; and Proceeds for a subsequent transfer or lease of such property if EPA's share of its fair market value is not returned to EPA.''

[12] Pub. L. 88–352, 78 Stat. 241 (codified as amended at 42 U.S.C. 2000d to 2000d–7).

[13] 40 CFR part 7, Nondiscrimination in Programs Receiving Federal Assistance from the Environmental Protection Agency.

[14] *Alexander* v. *Choate,* 469 U.S. 287, 293–94 (1985).

[15] 40 CFR 7.80, EPA Form 4700–4 and Standard Form 424.

[16] 40 CFR 7.90

[17] 40 CFR 7.35(b).

[18] The filing or acceptance for investigation of a Title VI complaint does not suspend an issued permit. Title VI complaints concern the programs and activities being implemented by Federal financial assistance recipient, and any EPA investigation of such a complaint primarily concerns the actions of recipients rather than permittees. While particular permitting decisions may act as a trigger for a complaint, allegations may involved wider range of issues or alleged adverse disparate impacts within the legal authority of recipients.

[19] Executive Order No. 12250, 45 FR 72995 (1980) (section 1–402).

(Title VI Advisory Committee) under the National Advisory Council for Environmental Policy and Technology in March 1998. The Title VI Advisory Committee was comprised of representatives from communities, environmental justice groups, state and local governments, industry, and other interested stakeholders. EPA asked the committee to review and evaluate existing techniques that EPA funding recipients could use to administer environmental permitting programs in compliance with Title VI. Techniques evaluated could include tools for assessing potential Title VI concerns and mitigating impacts where they occur.

Core components of the Recipient Guidance are based on several threshold principles which members of the Title VI Advisory Committee included in their April 1999, Report of the Title VI Implementation Advisory Committee: Next Steps for EPA, State, and Local Environmental Justice Programs.[20] As a result, EPA established guiding principles for implementing Title VI and developing the draft guide. In implementing Title VI and developing this final guidance, EPA is reaffirming its commitment to the following principles:

- All persons regardless of race, color or national origin are entitled to a safe and healthful environment.
- Strong civil rights enforcement is essential in preventing Title VI violations and complaints.
- Enforcement of civil rights laws and environmental laws are complementary, and can be achieved in a manner consistent with sustainable economic development.
- Early, preventive steps, whether under the auspices of state and local governments, in the context of voluntary initiatives by industry, or at the initiative of community advocates, are strongly encouraged to prevent potential Title VI violations and complaints.
- Meaningful outreach and public participation early and throughout the decision-making process is critical to identify and resolve issues, and to also assure proper consideration of public concerns.
- Intergovernmental and innovative problem-solving provide the most comprehensive response to many concerns raised in Title VI complaints.

D. The Interface Between Public Involvement and Title VI

Because public involvement plays a critical role in understanding and assessing how issues affect a community, meaningful public involvement should be an integral part of the permit decision-making process. Meaningful public involvement consists of informing, consulting, and working with communities at various stages of the permitting process to address their concerns. Appropriate collaboration during the permitting process can foster trust, and help establish credible, solid relationships between permitting agencies and communities. Such collaboration may serve to ensure that concerns are identified and addressed in a timely manner to possibly reduce the filing of some Title VI complaints.

The fundamental premise of EPA's 2003 Public Involvement Policy is that ''EPA should continue to provide for meaningful public involvement in all its programs, and consistently look for new ways to enhance public input. EPA staff and managers should seek input reflecting all points of view and should carefully consider this input when making decisions. EPA also should work to ensure that decision-making processes are open and accessible to all interested groups, including those with limited financial and technical resources, English proficiency, and/or past experience participating in environmental decision-making. Such openness to the public increases EPA's credibility, improves the Agency's decision-making processes, and can impact final decision outcomes. At the same time, EPA should not accept any recommendation or proposal without careful, critical examination.'' [21]

In 1999 the Office of Solid Waste conducted a series of seven case studies to determine if the redevelopment of EPA Brownfields [22] Pilots had been impeded by Title VI complaints, and to address concerns of whether these complaints may deter businesses from redeveloping Brownfields sites. The study, ''Brownfields Title VI Case Studies,'' [23] indicated that community residents are not likely to file Title VI complaints when the redevelopment process provides for early and meaningful community involvement, and creates a benefit for the local community. In several of the case study Pilots, communities were involved in identifying and helping to resolve issues during the early stages of the process which helped build trust between stakeholders and a sense of ownership for community members. According to those interviewed, community outreach and involvement served to prevent the filing of Title VI complaints and other opposition to development projects.

The interface between public involvement and Title VI often arises when racial or ethnic communities believe that they've been discriminated against as a result of a decision made in the permitting process. OCR believes that many of these assertions of discrimination arise from a failure to adequately involve the public in the pre-decisional process prior to permit issuance. In situations such as this, a finding of discrimination in the substantive outcome of a process, such as discriminatory human health or environmental effects is not necessary. Violations of Title VI or EPA's Title VI regulations can be based solely on discriminatory actions in the procedural aspects of the permitting process. Many Title VI complaints center around allegations of discrimination that may have been prevented, mitigated, or resolved if certain public involvement practices had been implemented by recipient agencies. OCR believes that if recipients focus on early, inclusive and meaningful public involvement throughout the entire permitting process, the likelihood of complaints alleging discrimination in the public involvement process, will be reduced.

E. Scope and Flexibility

This guidance was written at the request of the states and is intended to offer suggestions to help state and local recipients of EPA financial assistance develop and enhance the public involvement portion of their existing permitting programs. This guidance offers a flexible framework of public involvement approaches. The information and tools discussed in this guidance include proactive public involvement activities which EPA recipients may use to help better address situations that might otherwise result in complaints filed alleging violations of Title VI and EPA's Title VI implementing regulations.

EPA knows that because recipients may have different Title VI concerns in communities within their jurisdiction, different levels of resources, and different organizational structures, a ''one-size-fits-all'' Title VI public involvement approach will not

[20] For a copy of this report, see: *http: www.epa.gov/civilrights/t6faca.htm.*

[21] For a copy of this report, see: *http://www.epa,gov/publicinvolvement/policy2003/final policy, pdf.*

[22] EPA defines Brownfields as real property that is expanded, redeveloped, or reused which may contain or potentially contain a hazardous substance, pollutant or contaminant. Cleaning and reinvesting these properties take development pressures off of undeveloped, openland which help to improve and protect the environment. For more information on Brownfields Cleanup and Redevelopment, see: *http://www.epa.govswerosps/bf/index.html*

[23] For a copy of this report, see: *http://www.epa.gov/oswer/ej/ejndx.htm#titlevi* or call the hotline at 1–800–424–9346.

adequately address every program's needs. Recipients are therefore encouraged to use the activities or approaches in this guidance that will be most beneficial in addressing each situation accordingly. While this guidance is intended to focus on issues related to public involvement in environmental permitting, recipients may also consider developing proactive approaches to promote equitable compliance assurance and enforcement of environmental laws within individual jurisdictions. Even though recipients are not required to implement the Title VI public involvement approaches described in this guidance, they are required to operate their programs in compliance with the non-discrimination requirements of Title VI and EPA's implementing regulations.

II. Approaches to Meaningful Public Involvement

This guidance suggests a number of public involvement approaches or elements recipients may want to consider adopting and implementing to help address Title VI related concerns in their permitting programs. The approaches described here are not intended to be mutually exclusive. The objective of these approaches is to have recipients fully engage as many members of the affected community as possible in the discussions and decisions made regarding issues in their community. Because of differences in culture, levels of experience, knowledge, and financial resources, recipients are encouraged to combine portions of several, or use as many approaches to the extent appropriate to satisfy their program needs. Recipients may couple these approaches with existing approaches already in use to better implement their Title VI programs. Recipients are also encouraged to develop and implement additional approaches not mentioned in this guidance. OCR may consider the outcomes of any approaches in the analysis of a Title VI complaint that relates to programs, activities or methods of administration.[24] Suggested approaches are listed below.

A. Developing and Implementing an Effective Public Involvement Plan

A Public Involvement Plan (PIP) is a document that serves as the basic foundation of any good public involvement program. PIPs identify community concerns and discuss the approaches recipients plan to take to address those concerns through various outreach activities. An effective PIP includes discussions of what recipients will do to ensure that the needs and concerns of the affected community are addressed. In addition, an effective PIP strives to keep the community informed of the public involvement opportunities available to them during the decision-making process. If implemented properly, an effective PIP will expedite the flow of information for unexpected events, answer basic questions on issues related to the community's concerns, and help ensure better decision outcomes to benefit the affected community. Equally important, an effective PIP will provide members of the affected communities with a sense of partnership in the decision-making process underlying the permitting process. For these reasons, communities and other affected groups should be included in the development of the PIP. Recipients may decide to take the lead in contacting the necessary groups and developing their PIP as an agency, or may use a neutral third party to convene the relevant groups and facilitate the process. Either way, communities and all those affected by the decision outcome should be involved in developing the PIP, as well as ensuring that the planning efforts of the recipient agency address those issues that are important to them.[25] An effective PIP will include the following information:

(1) An overview of the recipient's plan of action for addressing the community's needs and concerns,

(2) A description of the community (including demographics, history, and background),

(3) A contact list of agency officials with phone numbers and email addresses to allow the public to communicate via phone or internet,

(4) A list of community's concerns (past and present),

(5) A detailed plan of action (outreach activities) recipient will take to address concerns,

(6) A contingency plans for unexpected events,

(7) Location(s) where public meetings will be held,

(8) Contact names for obtaining translation of documents and/or interpreters for meetings,

(9) Local media contacts; and

(10) Location of the information repository.

A PIP may change from one affected community group to another or for the same community group over time depending on the types of facilities in the community and the environmental issues faced by the community. PIPs are public documents that should always be available for public viewing. PIPs should be living documents that can easily be revised at any time to effectively address the needs and concerns of the affected community. Because of the informative/exchange age in which we live, PIPs should be made available for the public in hard copy as well as electronically by way of the Internet. PIPs should contain web addresses of agency officials to allow the public the ability to communicate via the internet.

B. Training Staff

To understand the importance of building relationships with communities, recipients may need to make internal commitments to tailor their programs so that public involvement becomes a part of the culture of how staff are trained and programs operate. A successful public involvement program should consist of a team of knowledgeable agency staff (possibly from different program offices within the recipient agency) who are committed to, and have the ability to reach out and engage the community early in the permitting process. Because the public may sometimes harbor frustration towards public agency officials who may not be certain about how to properly address an issue within the scope of a public meeting, it is critical for those on the public involvement team to have broad-based skills. Such skills include knowing how to communicate, understand, and address concerns of the general public. In addition, the team should be able to work well together and make sure that everyone thoroughly understands and is able to articulate agency policy, perspectives, and operating procedures of their program in a manner which the public can understand. To be most effective, the public involvement team should include at a minimum, staff capable of serving in permitting and community liaison roles. Although most staff may not have readily acquired public involvement understanding or outreach skills to communicate and work out disputes between their agency and the public in a polished manner, through training, many can acquire them.

Training should include ensuring that there is a thorough knowledge of all of the applicable requirements as well as how to engage the public throughout the

[24] For further discussion of the concept of giving ''due weight'' to a recipient's compliance efforts in the context of a Title VI complaint, see Section V.

[25] For suggestions on how to develop a Public Involvement Plan, see: *http://www.epa.gov/epaoswer/hazwaste/permit/pubpart/manual.htm*, *http://www.epa.gov/superfund/tools/cag/ci_handbook.pdf*, and *http://web.em.doe.gov/ftplink/public/doeguide.pdf*.

entire permitting process. Team members or program staff should know and be able to explain ''what to do, how to do it, and when to do it'' for the programs they work in. In addition, training should include sessions on how to actively listen to the public's concerns, the importance of seriously considering the public's opinions, and addressing the public's questions in an understandable, prompt and respectful manner. Training that emphasizes these points among others may reduce the likelihood of controversy, permitting delays and the filing of Title VI complaints. While training alone does not guarantee that delays in the permitting process or the filing of Title VI complaints will no longer occur, it is a helpful adjunct to any dispute avoidance and resolution process.

Basic elements for an effective public involvement training program include:

- A review of EPA's Title VI regulations and how those regulations apply and are addressed in the context of environmental permitting programs;
- Step by step training on how to explain the applicable environmental program regulations to the public in a clear and concise manner;
- Cultural and community relations sensitization;
- How to engage in a dialogue and collaboration, as well as how to build and maintain trust and mutual respect with communities;
- Skills and techniques to enable staff to effectively address community concerns in a clear and concise manner;
- A basic use of available technological communication tools such as the internet, databases, GIS tools and site maps, etc. to help identify and address potential issues in affected communities that may give rise to Title VI concerns; and
- Alternative dispute resolution techniques to enable staff to design and carry out a collaborative and informal process that can help resolve Title VI concerns.[26]

C. Involving the Public Early and Often Throughout the Permitting Process

Public involvement done early and often, is essential for the success of any permitting program. Public input is a valuable element which can influence decisions made in communities hosting proposed and permitted facilities. Early involvement is not only helpful to communities, but to recipients as well, because it encourages information exchange and gives time for both parties to consider and better understand the others viewpoints before actual decisions are made.

Some regulations require permitting programs to include public involvement opportunities during certain stages of the permitting process. While such requirements are designed to ensure that community input is obtained at critical stages of the process, the public may sometimes feel as though these opportunities do not include them as active, ongoing partners. Recipients should tailor and integrate public involvement practices that engage communities into as many stages of the process as appropriate, so that public involvement becomes more of a ''culture'' of how agencies think and operate, as opposed to a list of measures to check off as they are completed. Examples of ways to encourage early public involvement include:

- When soliciting community input regarding upcoming decisions, take steps to get feedback from as many members of the affected community as possible, prior to the meeting. This may mean finding out from community members, who will and will not attend the meeting. Based on that information, provide alternative means of participating for those community members who would not be able to attend the meeting. For example, some members may want to, and have the time to attend every meeting to hear discussions of the issues every step of the way; while others, due to time constraints, would be satisfied submitting written comments or completing agency questionnaires regarding the issues, while trusting that their opinions and concerns will be considered during discussions and when decisions are made.
- Requiring facilities to hold pre-application meetings with the public prior to submitting their application to the permitting agency. Such an activity, which is required in some programs, can open the dialogue between the permit applicant and the community in the very early stages of the process. This gives the facility an opportunity to share information with the community and hear and respond to their concerns with greater sensitivity prior to submitting the permit application.

Involving the public in identifying potential issues upfront and in discussions regarding possible solutions may help promote ''ownership'' of decisions and policies made affecting their community. This practice can help maintain community support over the life of the permit. Even though some decisions may not always fully reflect the community's views, if communities are involved early and throughout the process, they may be more willing to accept the decisions made and continue to participate in discussions to help prevent future issues. Such community involvement may help reduce the likelihood of communities challenging permit decisions toward the end of the permitting process, or filing Title VI complaints alleging discrimination.

D. Encouraging Stakeholder and Intergovernmental Involvement

Stakeholder involvement is the process of bringing together those people or groups who may be affected by decisions made regarding issues in a community. Stakeholder groups identify, discuss and work toward resolving issues in a collaborative manner. Groups may include but are not limited to communities, businesses, environmental justice groups, Federal, state and local governments, tribes, academia, and environmental and trade organizations. Stakeholder involvement is vital in establishing and maintaining a successful public involvement program. Effective stakeholder involvement ensures that diverse interests are considered and gives community members opportunities to take active roles to effectively contribute and influence decisions affecting them and their community. As stakeholders continue to work together, they become more familiar with the character of the community and are better able to collaboratively mitigate or resolve issues as they arise.

Depending on the scope of authority, resources and expertise, the representatives in stakeholder groups can be very broad. It is important to plan and carefully consider beforehand, which stakeholders to include in the meetings, and to seek out the groups and individuals who will be most affected by the proposed action. Contacting some groups and individuals may be difficult because of their cultural or economic lifestyles, while locating and including other groups will be easier due to their known interest in the decision outcome. For instance, some Title VI concerns may involve zoning or traffic patterns. Collaborating with the governmental units responsible for regulating zoning and traffic patterns, along with the communities that will be affected by any new potential driving routes, may increase the likelihood of achieving more effective solutions to concerns raised in the Title VI context. The earlier all appropriate parties are identified, and brought into the process, including other governmental agencies, the greater the likelihood of reaching effective solutions.

[26] See section II. G, 'Using Alternative Dispute Resolution Techniques'.

E. Equipping Communities With Tools To Help Ensure Effective Public Involvement

Often the public does not get involved in decision-making because of their lack of understanding or knowledge of issues affecting their community. Alternatively, the public may not articulate or formulate their concerns in a manner that clearly fits into the decision-making process underlying the issuance of a permit. As a result, the public feels as if their views were not valued or seriously considered when final permit decisions were made. It is important that the public be equipped with necessary tools to allow them to effectively participate in the permit decision-making process. Training should be offered to educate the public on process and basic technical issues that are relevant in making permitting decisions. Training that emphasizes the procedures, options and available information, may encourage community members to assume a more active role when participating in permitting discussions affecting them and their community. Doing so can affect how issues are resolved at the local and state levels. For instance, the benefits of holding educational workshops that clarify public involvement opportunities in the permitting process would create a greater understanding of the permitting process by the public and may increase the level of public involvement; which could lead to a reduction in the number of Title VI complaints filed. An effective training/information program for communities may include the following:

- An information packet with useful information or facts sheets regarding applicable environmental regulations, the public involvement opportunities in the different environmental permitting programs, and the important role community involvement plays in helping to address community concerns early in the permit decision-making process, as opposed to later in a Title VI complaint.
- Targeted or one-day training sessions on different subject matters relating to public involvement and permitting. These sessions could include presentations/discussions on the importance of public involvement or a walk through of steps included in the permit review stage, while focusing on public involvement options and opportunities in the permitting process. For example, such a session could consist of discussions on the types of information needed to review a pending permit and points on how to prepare effective technical and legal comments.
- Specific ''how to'' sessions for the public that illustrate through role playing how they can effectively participate and influence decisions during the public involvement process.

F. Making Assistance/Grants Available to the Public

The complex and technical nature of many permitting programs may sometimes impede effective public involvement during the permitting process. To help bridge the gap in capacity between community groups and other stakeholders, several agencies have begun to provide resources in the form of grants and free technical assistance. These types of educational resources serve to help empower communities to better equip them to actively participate in discussions and offer solutions to help address potential Title VI issues in their community.

Grants such as Technical Assistance Grants (TAGs) [27] and assistance through programs such as Technical Outreach Services for Communities (TOSC) [28] have been very successful in educating communities on technical and process issues. In addition to grants, local colleges and universities within the communities can also serve as a major resource because of their technical expertise, research capabilities and historical knowledge of issues faced by the affected communities in the past.

G. Using Alternative Dispute Resolution Techniques

The ability to address potential impacts in a timely and collaborative fashion is critical to resolving problems that may form the basis for a Title VI complaint. The handling of Title VI concerns through the formal administrative process can consume a substantial amount of time and resources for all parties involved. Therefore, EPA strongly encourages recipients to consider and use Alternative Dispute Resolution (ADR) [29] techniques where appropriate to prevent and address concerns regarding public involvement in the permitting process. ADR refers to voluntary procedures used to prevent and settle controversial issues by developing and implementing an outcome agreeable to all parties. The goal of ADR is for stakeholders to collaborate and resolve issues acceptable to everyone involved.

ADR includes using a wide range of processes to resolve controversial issues. All ADR techniques involve a neutral third party who assists others in designing and conducting a process for reaching possible agreement. The neutral third party should not have a stake in the substantive outcome of the process. Often the use of ADR includes negotiation of issues between parties to reach an acceptable solution. Effective ADR can result in new understandings of and innovative ideas to address issues of concern. It is also particularly helpful in building better relationships that may be important for future interactions between the parties. Typically, all aspects of ADR are voluntary, including the decision to participate, the type of process used, and the content of any final agreement. Examples of ADR approaches that may be particularly relevant for Title VI concerns include:

- *Facilitation*—Facilitation is a process used to help parties constructively discuss complex or potentially controversial issues. Facilitators are often used to guide meetings, design approaches for discussing issues, improve communication between parties, create options, keep the parties focused on the issues at hand, and help avoid and overcome contentious situations.
- *Mediation*—Mediation is a process in which a neutral third party (the mediator) assists the parties in conflict in reaching a mutually satisfying settlement of their differences. Mediators are very useful in guiding the dynamics of a negotiation especially when unassisted discussions are not productive enough to reach a mutual agreement. Good mediators are skillful at assisting parties in constructively expressing emotions, encouraging information exchange, providing new perspectives on the issues at hand, and helping to redefine issues in ways that may lead to mutual gains. Mediators often provide facilitation as well as mediation services.

[27] A Technical Assistance Grant (TAG) provides money for activities that help communities participate in decision making at eligible Superfund sites. An initial grant up to $50,000 is available to qualified community groups so they can hire independent technical advisors to interpret and help them understand technical information about their site. TAGs may also be used to attend approved training and obtain relevant supplies and equipment. For more information, see *http://www.epa.gov/superfund/tools/tag/index.htm.*

[28] The Technical Outreach Services for Communities (TOSC) program provides free, independent, non-advocate, technical assistance to communities living near hazardous waste contaminated sites. The goal of the TOSC program is to help communities understand the underlying technical issues associated with contaminated sites in their neighborhoods so that they may be able to substantively participate in the decision-making process regarding issues in their community. For more information on TOSC, see: *http://www.epa.gov/superfund/tools/tosc/index.htm.*

[29] For more information on ADR techniques, contact EPA's Conflict Prevention and Resolution Center at *http://www.epa.gov/adr.*

• *Joint Fact-Finding*—Joint fact-finding is a process in which parties commit to building a mutual understanding of disputed scientific, technical, legal or other information. A neutral third party assists the group in identifying a mutually agreeable set of questions and selecting one or more substantive experts to provide information concerning the questions.

Incorporating ADR early in the process when developing a Public Involvement Plan, may prevent the need to use ADR at a later stage of the process when conflicts may have escalated or the range of available options to address concerns have been reduced. Involving all affected parties in the ADR process can help ensure that the agreements reached provide solutions to reduce or eliminate: (1) discriminatory effects resulting from the issuance of permits; and/or (2) discrimination during the public involvement process associated with the permitting process.

III. Suggested Approaches for Reducing Some Common Title VI Complaints

Listed below are four common issues often seen as part of Title VI complaints received in the EPA's Office of Civil Rights. A brief statement is included explaining each allegation, along with suggestions for approaches recipients may take to reduce future complaints of similar nature.

A. *Language Issues*—Recipients have not provided printed information in other languages or sufficient interpreters at meetings for the non-English speaking community members to ensure their full participation in the public involvement process.

Using written translation and oral interpreters in communities with non-English speaking members help ensure broader participation from the affected community. In June 2004, EPA published the ''Guidance to Environmental Protection Agency's Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (LEP)''.[30] According to this guidance, individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be Limited English Proficient, or ''LEP'' and may be entitled to language assistance with respect to a particular type of service, benefit or encounter. The intent of this guidance is to suggest a balance that ensures meaningful linguistic access to LEP persons to critical services while not imposing undue burden on small businesses, small local governments, or small nonprofit organizations. The guidance suggests four factors recipients may consider to determine if different language assistance measures are sufficient for the different types of programs and activities administered by the recipient. The use of this guidance would be helpful to recipients when determining what level of measures are needed to accommodate the LEP persons in affected communities to ensure maximum participation in the permitting process. The Guidance encourages recipients to develop an implementation plan to address the identified needs of the LEP populations they serve.

Additional suggestions on approaches recipients may use to reduce complaints regarding language issues include:

• While preparing your Public Involvement Plan, work with the community and consult EPA's LEP guidance to determine if translation and/or interpretation services will be needed to ensure meaningful participation. Examples of populations who should be considered when planning language services include, but do not limit persons near a plant or facility that is permitted or regulated by an EPA recipient, persons subject to or affected by environmental protection, clean-up, and enforcement actions of an EPA recipient, or persons who seek to enforce or exercise rights under Title VI or environmental statues and regulations. Consider whether the affected community's ability to participate in the process will be limited by the ability of their community members to speak or understand English.

• Plan and budget in advance for translation and interpreter services. If resources are limited, consider the sharing of language assistance materials and services among and between recipients, advocacy groups, Federal grant agencies, and reasonable business organizations. Where appropriate, train and/or test the competency of bilingual staff to act as limited or ad hoc interpreters and translators.

• If in-house or local resources are not available, contact nearby colleges or universities for possible assistance for translation of interpreter services and identifying other competent but cost effective resources.

• Use multilingual fact sheets, notices, signs, maps, etc. regularly to provide meaningful access by LEP persons to information in as many aspects of the permitting process as appropriate.

B. *Siting Issues*—Siting of facilities in neighborhoods that are hosting similar and often more facilities than nearby communities.

Local zoning boards often make land-use decisions based on zoning regulations that were enacted several decades ago. These decisions affect the location of many facilities. Such decisions can affect community members in many ways and result in very contentious and difficult situations for state agencies charged with permitting facilities. While state/local environmental permitting agencies are responsible for minimizing environmental impacts to local communities and liable for ensuring that its practices and policies are implemented in a nondiscriminatory manner, some of those same agencies may not be involved in local zoning decisions. To improve the relationship between communities, and state/local governments, some permitting agencies have begun working with their local land use and planning boards to try to integrate the environmental, social and economic needs of communities early in the process, beginning in the site planning stage.[31]

Some approaches that may be considered to help address potential siting issues include:

• Acknowledging concerns communities have with facilities placed near residential areas and working with those communities to develop outreach strategies to address their concerns;

• Working with the appropriate authorities to ensure that data regarding the demographics and location of existing facilities in communities are considered before making local land-use and planning decisions;

• Revising or developing state level regulations or policies that list reasonable land-use objectives and practices to guide agencies when making siting decisions;

• Revising or adopting ordinances that prohibit new facilities from producing net increases of environmental pollution in areas already hosting a number of facilities;

[30] For more information regarding Improving Access to services for Persons with limited English proficiency, *see* Executive Order No. 13166, 65 FR 50121 (2000), and Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 69 FR 35602 (2004). Recipients, federal agencies and community organizations may also find information at: *http://www.LEP.gov.*

[31] For examples on how some state and local agencies are working together to address community concerns regarding siting, *see* the National Academy of Public Administration's July 2003 report entitled ''Addressing Community Concerns: How Environmental Justice Relates to Land Use Planning and Zoning'' at *http://www.napawash.org.*

• Evaluating zoning in heavily populated areas to determine whether current land use practices differ from those employed when area was previously zoned;

• Having state environmental agencies work with local land-use and planning boards to help them understand the effects of human health and the environment on communities from previous siting decisions made, and begin developing strategies to reduce future impacts on those affected communities;

• Having state environmental agencies provide outreach and technical assistance (through training workshops) to local governments on how to engage communities in siting decisions made; and

• Sharing environmental data with local governments to help them project and evaluate future impacts of proposed land use plans on existing communities before decisions are finalized.

C. *Insufficient Public Notices*—Lack of meaningful opportunities for communities to participate in the public involvement process because notices are not publicized broadly enough to reach all communities.

Community input plays an integral role in any successful permitting program. Public notices serve as a means to inform the public and ensure community input. Inadequate public notice programs can result in a lack of trust between communities and state/local agencies, permitting delays, and the filing of Title VI complaints.

Suggested approaches for reducing future complaints regarding insufficient public notices include:

• Seeking community input to find out what pathways would be most effective in getting information out to particular communities;

• Choosing outlets that are most widely used by members of the affected community (*e.g.*, community-based church bulletins, culturally-based community newspapers, grocery stores, libraries, foreign-language radio for reaching non-English-speaking communities, the internet and other places frequently visited by members of the affected community);

• Notifying communities at least once a week (*e.g.*, 10 to 14 days before, one week before and one day before the event is held via radio, phone, e-mail, newspaper, etc.) to ensure the greatest level of participation;

• Announcing times, dates and locations of events clearly;

• Providing sufficient information on the purpose and scope of the meeting by listing the types of information to be discussed, along with the type of feedback/input the agency is seeking from the public; and

• Providing names, addresses (including e-mail addresses), and telephone numbers of agency contact persons.

D. *Information Repository*—Lack of an information repository or insufficient notice regarding the location and/or hours for reviewing permit information in the repository, or selection of an inconvenient location for the affected community.

Information repositories provide public access to accurate, detailed, and current data about facilities in their community.[32] Although states have the authority to require that facilities establish information repositories, many states have not included it as a mandatory activity in their regulations. However, the existence of an information repository in a community shows a responsiveness and commitment to the community's needs for comprehensive information regarding a facility. Information repositories greatly improve public participation by making important information readily accessible to communities interested in participating in the permitting process or merely wanting to keep abreast of activities at facilities in their neighborhoods. Suggestions on approaches recipients may use to reduce complaints regarding information repositories include:

• Establishing, or requiring that facilities establish information repositories especially in cases where a significant amount of public concern is expected or has surfaced, or when the community has unique information needs;

• Choosing locations for information repositories in places most convenient and accessible to the public (*e.g.* local public libraries, community centers, churches, etc.);

• Establishing an online information repository for public access;

• Ensuring that the existence of the information repository is well publicized;

• Ensuring that repositories are placed in well lit and secure locations;

• Ensuring that the hours for reviewing information in the repository are convenient to the public;

• If a permitting activity is controversial or is expected to raise a lot of community interest, suggesting that the facility consider providing several copies of key documents in the repository so many people can review the information at the same time; and

• Ensuring that the repository is updated as new information is generated regarding the facility.

IV. Evaluating Approaches for Meaningful Public Involvement

After implementing any of the above public involvement approaches, it is important to periodically evaluate the approaches from the beginning stages of the process to identify and address areas in need of improvement. The evaluation process should be a fundamental part of any public involvement process. Evaluating the public involvement program on an ongoing basis gives the recipient a sense of where things are and an indication of how and where things are going. Evaluating the program can also help the recipient determine whether set goals were met, make sure that the process stays on track and allow for changes as the process moves forward.

Tools used for evaluating public involvement programs may include:

• *Informal Feedback*—Informal feedback is unstructured communication on a routine basis between the recipient agency, the community, and facilities to give everyone a chance to express their feelings on how the process went, is going, and how it can be improved.

• *Questionnaires*—Questionnaires are very useful and usually consist of short to-the-point questions to determine whether the participants felt the activity was useful. Questionnaires are often used at the end of an event such as a public meeting.

• *Interviews*—Interviews are usually done under a more formal setting when feedback is needed from a larger group. Feedback obtained from interviews may be used to help construct additional and more defined tools (*e.g.*, community action plans).

• *Debriefs*—Debriefs are very useful methods for receiving internal feedback from staff members on a process. Debriefs are most successful when done

[32] Federal, state and local government officials may access risk management plans (RMP) (describing potential accidental releases) and Off-site Consequence Analysis (OCA) information for official use by contacting their Implementing Agency or EPA's contractor-operated RMP Reporting Center at 301–429–5018 (e-mail: *userrmp.usersupport@csc.com*). OCA information is available to the public at Federal reading rooms located throughout the United States and its territories. EPA also makes available RMPs without the OCA data elements that might significantly assist someone in targeting a chemical facility. State Emergency Response Commissions and Local Emergency Planning Committees may also provide the public with read-only access to OCA information for local facilities. Private individuals can find contact information for a local committee or get a list of facilities that have opted to make their OCA information available to the public without restriction at *http://www.epa.gov/ceppo/lepclist.htm* or by calling the EPA hotline at (800) 424–9346.

shortly after the process concludes to ensure that all major issues are addressed, and suggestions for improvements can be implemented into future activities.

• *Surveys*—Surveys are very useful to obtain data or statistical information.

V. Due Weight

Many recipients, have asked OCR to provide ''incentives'' to help them develop proactive Title VI related approaches. Some recipients have asked OCR to recognize, and to the maximum extent possible, rely on the results of any such approaches in assessing complaints filed with EPA. While EPA encourages efforts to develop proactive Title VI related approaches, under the Civil Rights Act of 1964, the Federal government is charged with assuring compliance with Title VI. Consequently, OCR cannot completely defer to a recipient's own assessment of whether Title VI or EPA's Title VI implementing regulations have been violated. In addition, OCR cannot rely entirely on an assertion that a Title VI approach has been followed or delegate its responsibility to enforce Title VI to its recipients.[33] Thus, with regard to the processing of Title VI complaints, EPA retains the ability to:

• Decide whether to investigate the complaint using the recipient's analysis as supplemental information;

• Investigate a complaint or initiate a compliance review notwithstanding any informal resolution reached by the recipient and complainant; and

• Initiate its own enforcement actions and compliance reviews as a general matter.

Nevertheless, EPA believes that it can, under certain circumstances, recognize the results of information submitted and give it appropriate due weight. For example, if during the course of an investigation, results of adopted approaches are submitted as evidence that EPA's Title VI regulations have not been violated, EPA will review the approach and results to determine how much weight to give the submission in its investigation.[34]

Some recipients may develop procedures for their permitting programs that meet certain criteria designed to ensure a nondiscriminatory public involvement process. The weight given any evidence related to the public involvement process and the extent to which OCR may rely on it in its decision will likely vary depending upon:

• Whether the criteria that formed the basis for the program were sufficient to ensure a nondiscriminatory process;

• If the overall permitting process met those criteria; and

• The relevance of the recipients' public involvement programs to the allegation(s) and the thoroughness of documentation of how the recipient addresses the allegations.

The value that OCR expects to give public involvement approaches will likely range from no weight for procedures that have significant deficiencies with respect to the considerations listed above, to significant weight for procedures depending on the outcome of OCR's review in light of the considerations listed above. Some weight would likely be given to procedures that fall between these two extremes, such as efforts which show that the recipient attempted to resolve specific allegations before the complaint was filed with EPA. However, if OCR finds that a recipient's public involvement process warrants the greatest weight, then OCR would generally rely upon the recipient's input in subsequent decisions. Consequently, OCR may dismiss future allegations related to issues covered by that process. However, OCR may conduct an investigation in cases where there is an allegation or information revealing that circumstances were substantially different and showed that the public involvement process used was inadequate or improperly implemented.

VI. Conclusion

This guidance suggests approaches that recipients of EPA financial assistance may want to use to ensure nondiscrimination and to help reduce the filing of complaints alleging public involvement violations of Title VI of the Civil Rights Act of 1964 and EPA's Title VI implementing regulations. This guidance emphasizes community involvement early and often in the permitting process. This guidance also focuses on four common allegations in Title VI complaints and offers suggestions on how to reduce the likelihood of future complaints of similar nature. EPA believes that the approaches suggested in this guidance will help improve relations between EPA recipients and communities, enable communities to better participate in the public involvement portion of the permitting process, and give direction to EPA recipients and local decision-makers on possible ways to reduce the filing of future complaints related to public involvement practices alleging violations of Title VI and EPA's Title VI implementing regulations.

Dated: February 10, 2005.

Karen D. Higginbotham,

Director, Office of Civil Rights.

VII. Additional Resources

EPA, 2004, Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficiency Persons, (available at: *http://www.epa.gov/civilrights/lepaccess.htm*).

EPA, 2003, Public Involvement Policy of the U.S. Environmental Protection Agency, Office of Policy, Economics and Innovation, Washington, DC, EPA 223-B–03–002 (available at: *http://www.epa.gov/publicinvolvement/policy2003/finalpolicy.pdf*).

EPA, 2003, Moving Towards Collaborative Problem-Solving: Business and Industry Perspectives and Practices on Environmental Justice, Office of Environmental Justice, Washington, DC, EPA/300–R–03–003 (available at: *http://www.epa.gov/compliance/resources/publications/ej/ej_annual_project_reports.html*).

EPA, 2003, 2001–2002 Biennial Report: Constructive Engagement and Collaborative Problem-Solving, Office of Environmental Justice, Washington, DC, EPA 300–R–03–001 (available at: *http://www.epa.gov/compliance/resources/publications/ej/ej_annual_project_reports.html*).

EPA, 2002, Superfund Community Involvement Toolkit, Office of Solid Waste and Emergency Response, Washington, DC, EPA 540–K–01–004 (available at: *http://www.epa.gov/superfund/tools/index.htm*).

EPA, 2002, Enhancing Facility-Community Relations, Office of Solid Waste, Washington, DC, EPA/530/F–02–037 (available at: *http://www.epa.gov/epaoswer/hazwaste/tsds/site/f02037.pdf*).

EPA, 2001, Community Involvement Policy Directive 9230.0–99: Early and Meaningful Community Involvement, Office of Solid Waste and Community Response, Washington, DC, (available at: *http://www.epa.gov/superfund/resources/early.pdf*).

EPA, 2000, Social Aspects of Siting RCRA Hazardous Waste Facilities, Office of Solid Waste and Emergency Response, Washington, DC, EPA530–K–00–005 (available at: *http://www.epa.gov/epaoswer/hazwaste/tsds/site/k00005.pdf*).

[33] See 28 CFR 50.3(b) (''Primary responsibility for prompt and vigorous enforcement of Title VI rests with the head of each department and agency administering programs of Federal financial assistance.''); Memorandum from Bill Lann Lee, Acting Assistant Attorney General, U.S. Department of Justice, to Executive Agency Civil Rights Directors (Jan. 28, 1999) (titled Policy Guidance Document: Enforcement of Title VI of the Civil Rights Act of 1964 and Related Statutes in Block Grant-Type Programs) (''It is important to remember that Federal agencies are responsible for enforcing the nondiscrimination requirements that apply to recipients of assistance under their program.'').

[34] In addition to the analyses and procedures described in this section, OCR also intends to consider other available and relevant evidence from both the recipient and complainant, such as meeting minutes, correspondence, empirical data, interviews, etc., as appropriate.

EPA, 2000, Engaging the American People: A Review of EPA's Public Participation Policy and Regulations with Recommendations for Action, Office of Policy, Economics, and Innovation, Washington, DC, EPA 240–R–00–005 (available at: *http://www.epa.gov/stakeholders/pdf/eap_report.pdf*).

EPA, 2000, Public Involvement in Environmental Permits: A Reference Guide, Office of Solid Waste and Emergency Response, Washington, DC, EPA–500–R–00–007 (available at: *http://www.epa.gov/permits/publicguide.htm*).

EPA, 1999, Report of the Title VI Implementation Advisory Committee: Next Steps for EPA, State and Local Environmental Justice Programs, Office of Environmental Cooperative Management, Washington, DC 20460 (available at: *http://www.epa.gov/ocem/nacept/titleVI/titlerpt.html*).

EPA, 1999, Brownfields Title VI Case Studies: Summary Report, Office of Solid Waste and Emergency Response, Washington, DC, EPA 500–R–99–003 (available at: *http://www.epa.gov/oswer/ej/ejndx.htm#titlevi*).

EPA, 1996, RCRA Expanded Public Participation Rule, Office of Solid Waste, Washington, DC, 40 CFR Parts 9,124 & 270 (available at: *http://www.epa.gov/epaoswer/hazwaste/permit/pubpart.htm*).

EPA, 1996, RCRA Public Participation Manual, Office of Solid Waste, Washington, DC (available at: *http://www.epa.gov/epaoswer/hazwaste/permit/pubpart/manual.htm*).

EPA, 1995, The Decision Maker's Guide to Solid Waste Management, Volume II, Office of Solid Waste and Emergency Response, Washington, DC, EPA530–R–95–023 (available at: *http://www.epa.gov/epaoswer/non-hw/muncpl/dmg2.htm*).

EPA, 1990, Community Involvement Policy Directive 9230.0–08: Planning for Sufficient Community Relations, Office of Solid Waste and Community Response, Washington, DC (available at: *http://www.epa.gov/superfund/tools/cag/directives/planning.pdf*).

EPA, 1990, Sites for Our Solid Waste: A Guidebook for Effective Public Involvement, Office of Solid Waste, Washington, DC, available at: *http://www.epa.gov/epaoswer/non-hw/muncpl/sites/toc.pdf*).

DOE, 1999, How to Design a Public Participation Program, Office of Intergovernmental and Public Accountability (EM–22) Washington DC, (available at: *http://web.em.doe.gov/ftplink/public/doeguide.pdf*).

IAP2, 2003, Planning for Effective Public Participation, International Association for Public Participation, The Perspectives Group, Alexandria, Va., (Web site: *http://www.theperspectivesgroup.com*).

NAPA, 2002, Models for Change: Efforts by Four States to Address Environmental Justice, National Academy of Public Administration, Washington, DC (available at: *http:/www.napawash.org/publications.html*).

ELI, 2001, Opportunities for Advancing Environmental Justice: An Analysis of U.S. EPA Statutory Authorities, Environmental Law Institute, Washington, DC, ISBN No. 1–58576–031–5. ELI Project No. 981623 (available at: *http://www.eli.org*).

State and Environmental Dispute Resolution Programs (available at: *http://www.policyconsensus.org*).

[FR Doc. 05–3448 Filed 3–3–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7880–3]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The Environmental Protection Agency is proposing to enter into an ''Administrative Order On Consent For Past Cost Reimbursement/Covenant Not to Sue and Removal'' pursuant to Sections 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9606(a), 9607 and 9622. This proposed administrative settlement is intended to: (1) Resolve the liability of LC Associates, LP. (''Settling Party'') under CERCLA for EPA's past response costs incurred at the Andela and River Bend Superfund Sites, Warwick Township, Bucks County, Pennsylvania (''the Sites''); and (2) further directs Settling Party to cleanup any future discovered PCB contamination on the Sites, if necessary, pursuant to the self-effectuating ''Removal Order'' component of this proposed settlement.

DATES: Comments must be provided within thirty (30) days from publication.

ADDRESSES: Comments should be addressed to Lydia Guy, Regional Hearing Clerk, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, and should refer to the Andela and River Bend Superfund Sites, Warwick Township, Bucks County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Benjamin M. Cohan (3RC41), 215/814–2618, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029.

SUPPLEMENTARY INFORMATION: Notice of administrative settlement: In accordance with Section 122(i)(1) of CERCLA, 42 U.S.C. 9622(i)(1), notice is hereby given of a proposed administrative settlement concerning the Andela and River Bend Superfund Sites, Warwick Township, Bucks County, Pennsylvania. The administrative settlement is subject to review by the public pursuant to this Notice. The proposed settlement has been reviewed and approved by the United States Department of Justice in accordance with Section 122(h) of CERCLA, 42 U.S.C. 9622(h).

The Settling Party has agreed to pay $135,000.00 to the Hazardous Substances Superfund Fund subject to the contingency that EPA may elect not to complete the settlement if comments received from the public during this comment period disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. This amount to be paid by the Settling Party was based upon EPA's determination of the fair share of liability of the Settling Party relating to the Sites. Monies collected from the Settling Party will be remitted to EPA's Hazardous Substances Superfund Fund for use in future clean-ups which may be undertaken under CERCLA.

EPA is entering into this agreement under the authority of Sections 106(a), 107 and 122 of CERCLA, 42 U.S.C. 9606(a), 9607 and 9622. Specifically, Section 122(h) of CERCLA authorizes cost recovery settlements with potentially responsible parties to allow them to resolve their liabilities at Superfund Sites without incurring substantial transaction costs. Under this authority, EPA proposes to settle with Settling Party in connection with the Sites, based upon a determination that Settling Party is responsible as an ''owner or operator of a vessel or a facility'' (the Andela and River Bend Sites) within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. 9607(a)(1) . As part of this administrative settlement, and for so long as Settling Party is in compliance with the terms of the agreement, including but not limited to cleanup of future discovered PCB contamination as specified in Section 7 of the settlement agreement, EPA will provide to the Settling Party a covenant not to sue or take administrative action against the Settling Party for reimbursement of past response costs pursuant to Section 107 of CERCLA, 42 U.S.C. 9607, with regard to the Sites.

The Environmental Protection Agency will receive written comments relating to this settlement for thirty (30) days from the date of publication of this Notice. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or

considerations which indicate that the settlement is inappropriate, improper, or inadequate. A copy of the proposed Administrative Order on Consent can be obtained from Benjamin M. Cohan, U.S. Environmental Protection Agency, Region III, Office of Regional Counsel (3RC41), 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, or by contacting Benjamin M. Cohan at (215) 814–2618.

Dated: February 11, 2005.

Donald S. Welsh,

Regional Administrator, U.S. Environmental Protection Agency, Region III.

[FR Doc. 05–4263 Filed 3–3–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

February 23, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 4, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at (202) 418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0819.

Title: Lifeline Assistance (Lifeline) Connection Assistance (Link-Up) Reporting Worksheet and Instructions (47 CFR 54.400–54.417).

Form No: FCC Form 497.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; business or other for-profit.

Number of Respondents: 1,318,055.

Estimated Time Per Response: .08–42 hours.

Frequency of Response: On occasion, monthly, annually, and other one time reporting requirements, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 101,493 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: In a Report and Order and Further Notice of Proposed Rulemaking in FCC 04–87 (WC Docket No. 03–109, adopted and released in April 2004), the Commission adopts the Joint-Board's recommendation to require all states, including federal default states, to adopt certification procedures to document income-based eligibility for Lifeline/Link-Up enrollment. Because self-certification of income is more difficult to confirm than is a self-certification of program participation, the Commission agreed with the Joint Board that requiring presentation of documentation supporting income eligibility would protect against fraud and abuse. The Commission held similar concerns for continued enrollment in the Lifeline/Link-Up program and required documentation of eligibility for continued enrollment in the program. In conjunction with presentation of income eligibility documentation, the eligible telecommunications carrier (ETC) is required to certify that the ETC has procedures in place to review presented documentation or to certify that it is in compliance with the state requirements established to review income eligibility documentation. ETCs must retain records of their certifications. In addition, the applicant is required to certify the accuracy of the state household income and the number of persons in the household. ETCs are required to collect and retain these certifications. The FCC Form 497 has also been revised to clarify instructions, add new data elements to the form to clarify specific requirements and reformatted for ease of completing. In addition to the certification and verification requirements noted above, the Commission will issue a voluntary survey to gather data and information about state Lifeline/Link-Up programs. This will enable the Commission to make more informed decisions in any future Commission orders.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–4248 Filed 3–3–05; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

February 23, 2005.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT: Paul J. Laurenzano, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0972.

OMB Approval date: 11/29/2004.

Expiration Date: 11/30/2007.

Title: Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers.

Form No.: FCC Forms 507, 508 & 509.

Estimated Annual Burden: 5,200 responses; 31,607 total annual burden hours; approximately 1–6 hours average per respondent.

Needs and Uses: The Commission took additional steps to provide rate-of-return carriers greater flexibility to respond to changing marketplace conditions. The Commission revised its access and universal service rules by (1)

modifying the ''all-or-nothing'' rule to permit rate-of-return carriers to bring recently acquired price cap lines back to rate-of-return regulation; (2) granting rate-of-return carriers the authority immediately to provide geographically deaveraged transport and special access rates, subject to certain limitations; and (3) merging Long Term Support with Interstate Common Line Support.

OMB Control No.: 3060–0774.

OMB Approval date: 12/20/2004.

Expiration Date: 12/31/2007.

Title: Federal-State Joint Board on Universal Service, CC Docket No. 96–45 (47 CFR Part 54).

Form No.: N/A.

Estimated Annual Burden: 6,311,546 responses; 1,876,790 total annual burden hours; 20 minutes average response time per respondent.

Needs and Uses: Congress directed the Commission to implement a new set of universal service support mechanisms that are explicitly and sufficient to advance the universals service principles enumerated in 47 U.S.C. Section 254 and other such principles as the Commission believes are necessary and appropriate for the protection of the public interest, convenience and necessity, and are consistent with the Act. Part 54 promulgates the rules and requirements to preserve and advance universal service; the collections are necessary to implement Sec. 254.

OMB Control No.: 3060–0992.

OMB Approval date: 1/14//2005.

Expiration Date: 1/31/2008.

Title: CC Docket No. 96–45 (FCC 01–195) and 47 CFR Section 54.507 (d)(1)-(4).

Form No.: N/A.

Estimated Annual Burden: 850 responses; 850 total annual burden hours; 1 hour per respondent.

Needs and Uses: Section 54.507 (d) provides addititonal time for recipients under the schools and libraries universal service support mechanism to implement contracts or agreements with service providers for non-recurring services. Section 54.507(d) extends the deadline for the implementation of non-recurring sevices for certain qualified applicants who are unable to complete implementation by the September 30 deadline. The rule provides schools and libraries with more time to install non-recurring services.

OMB Control No.: 3060–0513.

OMB Approval date: 2/10/2005.

Expiration Date: 2/29/2008.

Title: ARMIS Joint Cost Report.

Form No.: FCC Report 43–03.

Estimated Annual Burden: 83 responses; 4,150 total annual burden hours; 50 hours average per respondent.

Needs and Uses: The Joint Cost Report is needed to administer our joint cost rules (Part 64) and to analyze data in order to prevent cross-subsidization of non-regulated operations by the regulated operations of Tier 1 carriers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–4249 Filed 3–3–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

February 22, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 3, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0149.

Title: Application and Supplemental Information Requirements—Part 63, Section 214, Sections 63.01–63.601.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 35.

Estimated Time per Response: 5 hours.

Frequency of Response: Third party disclosure requirement and on occasion reporting requirement.

Total Annual Burden: 175 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: Section 214 of the Communications Act of 1934, as amended, requires that the FCC review the establishment, acquisition, operation, line extension, and service discontinuance by interstate common carriers. Since 1999, however, the Commission has only regulated the acquisition and discontinuance of telecommunications services. This OMB collection pertains primarily to section 63.71 of the Commission's rules, which governs the application process for receiving discontinuance, impairment or reduction in service authority.

OMB Control No.: 3060–0997.

Title: 47 CFR Section 52.15(k), Numbering Utilization and Compliance Audit Program.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 25.

Estimated Time per Response: 33 hours.

Frequency of Response: Third party disclosure requirement and on occasion reporting requirement.

Total Annual Burden: 825 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The audit program, consisting of audit procedures and guidelines, is developed to conduct random audits. The random audits are conducted on the carriers that use numbering resources in order to verify the accuracy of numbering data reported on FCC Form 502, and to monitor compliance with FCC rules, orders and

applicable industry guidelines. Failure of the audited carrier to respond to the audits can result in penalties. Based on the final audit report, evidence of potential violations may result in enforcement action.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–4250 Filed 3–3–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

February 24, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 4, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0653.

Title: Sections 64.703(b) and (c), Consumer Information—Posting by Aggregators.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 56,200.

Estimated Time per Response: 3.18 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 178,467 hours.

Total Annual Cost: $1,433,100.

Privacy Impact Assessment: No impact(s).

Needs and Uses: As required by 47 U.S.C. 226(c)(1)(A), 47 CFR 64.703(b) provides that aggregators (providers of telephone to the public or transient users) must post in writing, on or near such phones, information about the pre-subscribed operator services, rates, carrier access, the FCC address to which consumers may direct complaints. Section 64.703(c) establishes a 30-day outer limit for updating the posted consumer information when an aggregator has changed the pre-subscribed operator service provider (OSP). Consumers will use this information to determine whether they wish to use the services of the identified OSP.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–4251 Filed 3–3–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

February 24, 2005.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 4, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Cathy.Williams@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Cathy Williams at (202) 418–2918 or via the Internet at *Cathy.Williams@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0991.

Title: AM Measurement Data.

Form Number: Not Applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,900.

Estimated Time per Response: 0.50–16 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 29,255 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: In order to control interference between stations and assure adequate community coverage, AM

stations must conduct various engineering measurements to demonstrate that the antenna system operates as authorized. The data is used by station engineers to correct the operating parameters of an antenna. The data is also used by FCC staff in field operations to ensure that stations are in compliance with the technical requirements of the Commission's rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–4252 Filed 3–3–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing a Partially Open Meeting of the Board of Directors

TIME AND DATE: The open meeting of the Board of Directors is scheduled to begin at 4:30 p.m. on Wednesday, March 9, 2005. The closed portion of the meeting will follow immediately the open portion of the meeting.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: The first portion of the meeting will be open to the public. The final portion of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN PORTION OF THE MEETING: Capital Plan Amendment for the Federal Home Loan Bank of Seattle.

MATTER TO BE CONSIDERED AT THE CLOSED PORTION OF THE MEETING: Periodic Update of Examination Program Development and Supervisory Findings.

FOR FURTHER INFORMATION CONTACT: Shelia Willis, Paralegal Specialist, Office of General Counsel, at 202/408–2876 or *williss@fhfb.gov.*

Dated: March 2, 2005.

By the Federal Housing Finance Board.

Mark J. Tenhundfeld,

General Counsel.

[FR Doc. 05–4348 Filed 3–2–05; 12:42 pm]

BILLING CODE 6725–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to review contract proposals and provide recommendations to the Director, AHRQ, with respect to the technical merit of proposals submitted in response to a Request for Proposals (RFP) regarding ''Integrating Cost-Effectiveness Considerations in Health Policy Decisions''. The RFP was published in the Federal Business Opportunities on December 20, 2004.

The upcoming TRC meeting will be closed to the public in accordance with the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, FACA regulations, 41 CFR 101–6.1023 and procurement regulations, 48 CFR 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary information and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision and procurement rules that protect the free exchange of candid views and facilitate Department and Committee operations.

Name of TRC: The Agency for Healthcare Research and Quality—''Integrating Cost-Effectiveness Considerations in Health Policy Decisions.''

Date: March 7, 2005 (Closed to the public).

Place: Agency for Healthcare Research & Quality, 540 Gaither Road, Conference Center, Rockville, Maryland 20850.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact Joanna Siegel, Center for Outcomes and Evidence, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850, (301) 427–1491.

Dated: February 22, 2005.

Carolyn M. Clancy,

Director.

[FR Doc. 05–4180 Filed 3–3–05; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Enhancing Healthcare Provider's Ability To Prevent Sexual Violence

Announcement Type: New.

Funding Opportunity Number: RFA 05040.

Catalog of Federal Domestic Assistance Number: 93.136.

Key Dates:

Letter of Intent Deadline: April 4, 2005.

Application Deadline: May 3, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under section 391(a)(1) and (2) of the Public Health Service Act and, 42 U.S.C. 280b(a)(1) and (2) and Section 393 of the Public Health Service Act, 42 U.S.C. 280b–1a.

Background: The Centers for Disease Control and Prevention (CDC) is collaborating with its partners to better address sexual violence prevention within the health care sector. CDC and its partners have been discussing strategies for incorporating more of a health care focus into existing Sexual Assault Awareness Month (SAAM) activities. SAAM, held each year in April, is an opportunity to engage providers and raise awareness about the devastating effects of sexual violence. CDC is interested in a variety of topics, including the impact of sexual violence on public health, the role of health care providers, and the importance of prevention. The agency is in the process of creating a five-year strategic plan for how SAAM activities can be used as a catalyst for addressing sexual violence prevention in the health care sector. All recommended activities will complement those already developed by partner organizations for advocates and the general public.

Purpose: The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2005 cooperative agreement funds to expand the capacity of national professional organizations to address the topic of sexual violence prevention within their constituency of licensed healthcare providers.

The purpose of this funding is to support the creation of education and support materials that address sexual violence prevention within an organization that regularly provides professional development opportunities to its constituents. The products will foster the knowledge, skills, and abilities necessary for licensed healthcare providers to address sexual violence prevention in their practices.

Research suggests that sexual violence is characterized by risk and protective factors across multiple domains of influence, as represented by the ecological model presented in the World Report on Violence and Health (Krug, *et al.*, 2002). The domains of influence include individual, relationship, community, and society. Sexual

violence prevention activities include those that are aimed at addressing the domains of influence of potential victims, perpetrators, and bystanders.

Prevention strategies are often developed based upon the group for whom the intervention is intended. Using this type of differentiation, sexual violence interventions can again be divided into three categories:

- Approaches that are aimed at groups or the general population, regardless of each individual's risk for sexual violence perpetration or victimization (also called universal interventions). Groups can be defined geographically (*e.g.*, entire school or school district) or by characteristics (*e.g.*, ethnicity, age, gender).
- Approaches that are aimed at those who are thought to have a heightened risk for sexual violence perpetration or victimization are also referred to as selected interventions.
- Approaches that are aimed at those who have already perpetrated sexual violence or those who have been victimized are also called indicated interventions.

The specific purposes of this funding are to:

1. Provide an opportunity for national professional organizations to expand their leadership role in addressing the prevention of sexual violence by disseminating the key concepts of prevention, the ecological model, and prevention strategies to licensed healthcare providers within their membership. Strategies will be differentiated into universal, selected, or indicated categories. An emphasis should be placed on primary prevention and universal or selected strategies. Primary prevention activities involve stopping sexual violence victimization or perpetration before it occurs.

2. Conduct organizational assessments to determine understanding of the impact of sexual violence; the relationship to and distinction from domestic violence; knowledge of risk and protective factors; and comprehension of primary prevention by healthcare providers within their constituency.

3. Develop tools, educational materials, and/or training based upon information obtained from the organizational assessments. The products should emphasize the primary prevention of sexual violence (stopping the initial victimization or perpetration).

This program addresses the ''Healthy People 2010'' focus area of Injury and Violence Prevention.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): Increase the capacity of injury prevention and control programs to address the prevention of injuries and violence.

For the purposes of this program announcement the following definitions apply: Sexual violence: Sexual violence is ''any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person's sexuality using coercion, by any person regardless of their relationship to the victim, in any setting, including but not limited to home and work (Krug *et al.*, 2002).

Prevention: Population-based and/or environmental/system level services, policies and actions that prevent sexual violence from initially occurring. Prevention efforts work to modify and/or entirely eliminate the event, conditions, situations, or exposure to influences (risk factors) that result in the initiation of sexual violence and associated injuries, disabilities, and deaths. Additionally, prevention efforts seek to identify and enhance protective factors that may prevent sexual violence not only in at-risk populations but also in the community at large.

Intervention: Services, policies and actions provided after domestic violence or sexual violence has occurred and may have the advantageous effect of preventing a re-occurrence of violence.

Risk factor: Any factor that increases the likelihood that a person will experience sexual violence.

Protective factor: Any factor that decreases the likelihood that a person will experience sexual violence.

Providers: A person who is licensed to provide health or mental health care services. Examples include (but are not limited to) physicians, nurses, psychologists, and social workers.

This announcement is only for non-research activities supported by CDC/ATSDR. If research is proposed, the application will not be reviewed. For the definition of research, please see the CDC web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm*.

Activities: Awardee activities for this program are as follows:

1. Attend a two-day workshop on sexual violence prevention at CDC (Atlanta, GA) within two months of being funded.

2. Analyze recommendations for incorporating a health care focus into SAAM developed by experts working in the field of sexual violence prevention.

3. Research and demonstrate an understanding of the risk and protective factors associated with sexual violence victimization and perpetration.

4. Conduct assessments, with guidance and direction from CDC, to determine knowledge of sexual violence, including risk/protective factors and its impact on health; understanding of the relationship between sexual violence and domestic violence; and comprehension of prevention concepts by healthcare providers within their membership.

5. Develop and pilot test tools, educational materials, and/or training based upon information obtained from the organizational assessments. Obtain feedback from CDC and its partners. The tools, materials, and/or training should emphasize the primary prevention of sexual violence (stopping the initial victimization or perpetration).

6. Disseminate the tools, educational materials, and/or training to healthcare providers within their membership.

7. Evaluate the impact of the tools, educational materials, and/or training developed on provider behavior and clinical service delivery.

8. Collaborate with CDC on an ongoing basis to ensure consensus and uniformity related to core measures, tools, and processes, through conference calls and traveling to required meetings, including training sessions, evaluation meetings, and project updates.

9. Collaborate with CDC and its partners, including the National Sexual Violence Resource Center, on activities specifically related to SAAM.

10. Submit required reports to CDC as scheduled.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

1. Plan a two-day workshop on sexual violence prevention at CDC (Atlanta, GA) for recipients within two months of the award(s) being funded.

2. Provide relevant information related to the purpose and activities of this program announcement.

3. Facilitate communication with partners including, the National Sexual Violence Resource Center.

4. Provide technical assistance and consultation in the development and implementation of the assessment instruments.

5. Provide technical assistance and consultation in the development, pilot testing, and dissemination of the tools, educational materials, and/or training developed for healthcare providers.

6. Provide technical assistance and consultation in the evaluation of the impact of the tools, educational

materials, and/or training developed for healthcare providers.

7. Participate in meetings and conference calls.

8. Monitor the recipient's performance of program activities and compliance with requirements.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $100,000 (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: One.

Anticipated Award Date: September 1, 2005.

Budget Period Length: 12 months.

Project Period Length: Two years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Eligible applicants are national professional organizations that are non-profit and non-governmental. Eligible applicants must have memberships consisting of professional and licensed healthcare providers. The mission of eligible applicants should relate to enhancing the professional growth of its membership, creating and maintaining professional standards, and advancing clinical practice. CDC is working to develop and enhance the skills of healthcare providers to prevent sexual violence amongst their clients. The funding for this cooperative agreement is intended to support the development of toolkits, training activities and other educational materials for healthcare providers around the primary prevention of sexual violence.

Due to the short project period (two years), it is not possible for a constituency, or network of healthcare providers, to be developed. Eligible applicants should be professional organizations that are national in scope and already have a well-defined constituency of licensed healthcare providers. The term healthcare provider is broad and can apply to a variety of disciples (medicine, nursing, social work, psychology, etc.) Eligible applicants should also have a history of conducting professional development activities with their constituents and be in a position to influence healthcare practice. This infrastructure would allow eligible organizations to develop educational products and disseminate them effectively to their constituents.

For the reasons stated above, national professional organizations with a constituency of licensed healthcare providers are uniquely qualified to perform the tasks outlined in this cooperative agreement.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the special requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

- Late applications will be considered non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.
- The requested funding amount should not be greater than the ceiling amount of $100,000.
- Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

Electronic Submission: CDC strongly encourages you to submit your application electronically by utilizing the forms and instructions posted for this announcement on www.Grants.gov, the official Federal agency wide E-grant Web site. Only applicants who apply online are permitted to forego paper copy submission of all application forms.

Paper Submission: Application forms and instructions are available on the CDC Web site, at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Letter of Intent (LOI): Your LOI must be written in the following format:

- Maximum number of pages: Two
- Font size: 12-point unreduced
- Single spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid jargon

Your LOI must contain the following information:

- Number and title of this program announcement
- Brief description of your organization
- Description of membership (number of members, requirements for membership)
- Brief description of previous or current organizational activities related to sexual violence or sexual violence prevention

Application: Electronic Submission: You may submit your application electronically at: www.grants.gov. Applications completed online through Grants.gov are considered formally submitted when the applicant organization's Authorizing Official electronically submits the application to www.grants.gov. Electronic applications will be considered as having met the deadline if the application has been submitted electronically by the applicant organization's Authorizing Official to Grants.gov on or before the deadline date and time.

It is strongly recommended that you submit your grant application using Microsoft Office products (*e.g.,* Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF file. Directions for creating PDF files can be found on the Grants.gov Web site. Use of file formats other than Microsoft Office or PDF may result in your file being unreadable by our staff.

CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of your application. Any such paper submission must be received in accordance with the requirements for

timely submission detailed in Section IV.3. of the grant announcement. The paper submission must be clearly marked: ''BACK-UP FOR ELECTRONIC SUBMISSION.'' The paper submission must conform to all requirements for non-electronic submissions. If both electronic and back-up paper submissions are received by the deadline, the electronic version will be considered the official submission.

Paper Submission: If you plan to submit your application by hard copy, submit the original and two hard copies of your application by mail or express delivery service. Refer to section IV.6. Other Submission Requirements for submission address.

You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 25. If your narrative exceeds the page limit, only the first pages, which are within the page limit, will be reviewed.
- Font size: 12 point unreduced
- Double spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Abstract (one-page summary of the application, does not count towards page limit)
- Relevant experience and expertise
- Plan to conduct an assessment of organizational membership (including objectives, methods, and timeline)
- Plan to develop tools, educational materials, and/or training for organizational membership (including objectives, methods, and timeline)
- Capacity and staffing
- Evaluation
- Measures of effectiveness
- Proposed budget and justification (does not count towards page limit)

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Curriculum Vitaes and/or resumes
- Job descriptions
- Organizational charts
- Examples of tools, educational materials, and/or training activities developed by the organization related to health topics other than sexual violence

Letters of support

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

LOI Deadline Date: April 4, 2005.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: May 3, 2005.

Explanation of Deadlines: LOIs and Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you submit your LOI or application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

Electronic Submission:

If you submit your application electronically with Grants.gov, your application will be electronically time/date stamped which will serve as receipt of submission. In turn, you will receive an e-mail notice of receipt when CDC receives the application. All electronic applications must be submitted by 4 p.m. Eastern Time on the application due date.

Paper Submission:

CDC will not notify you upon receipt of your paper submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.
- Budgets for program year one should include travel costs for staff to attend a two-day planning and training meeting in Atlanta, Georgia with CDC and relevant partners.
- Funding may not be used for construction.
- Funding may not be used to purchase computer equipment and software, and internet connection equipment and software.
- Funding may not be used to provide direct services to victims or perpetrators of sexual violence.
- Funding may not be used for tertiary prevention or indicated strategies/efforts.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Guidance for completing your budget can be found on the CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm*

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service,

fax, or E-mail to: Jennifer Middlebrooks, Project Officer, 4770 Buford Highway, NE., Mailstop K–60, Atlanta GA 30341, Telephone: 770–488–4223, fax: 770–488–1360, e-mail: *jdanielson@cdc.gov.*

Application Submission Address:

Electronic Submission:

CDC strongly encourages applicants to submit electronically at: www.Grants.gov. You will be able to download a copy of the application package from www.Grants.gov, complete it offline, and then upload and submit the application via the Grants.gov site. E-mail submissions will not be accepted. If you are having technical difficulties in Grants.gov they can be reached by E-mail at *http://www.support@grants.gov* or by phone at 1–800–518–4726 (1–800–518–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. Eastern Time, Monday through Friday.

Paper Submission:

If you choose to submit a paper application, submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management-RFA 05040, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

1. Relevant Experience (30 points)

a. Does the applicant demonstrate experience providing leadership to a well-defined constituency of licensed healthcare providers?

b. Does the applicant demonstrate experience in collecting and using organizational assessment data?

c. Does the applicant demonstrate experience developing tools, educational materials, and/or training around health topics, including but not limited to sexual violence?

2. Plan to Conduct Assessment (25 points)

a. Does the applicant include a detailed work plan, including a time-line for the first year?

b. Does the applicant provide clearly stated goals and corresponding objectives that are specific, measurable, attainable, realistic, and time-phased?

c. Does the applicant describe how the organizational assessments will be conducted?

3. Plan to Develop Tools, Educational Materials and/or Training (25 points)

a. Does the applicant include a detailed work plan, including a time-line for the first year?

b. Does the applicant provide clearly stated goals and corresponding objectives that are specific, measurable, attainable, realistic, and time-phased?

c. Does the applicant describe how the data from the organizational assessment will be integrated into the plan for developing tools, educational materials, and/or training?

d. Does the applicant describe how the plan for creating tools, educational materials, and/or training will be developed? Does the applicant describe collaboration with CDC and its partners? Does the applicant describe how the products will be pilot tested? Does the applicant describe options for dissemination of the products?

e. Does the applicant indicate a willingness to use primary prevention concepts (stopping initial victimization and perpetration)? Does the applicant indicate a willingness to use prevention strategies that are differentiated at the universal or selected level? Does the applicant make use of risk and protective factors? Does the applicant incorporate strategies that are aimed at addressing individual, relationship, community and societal factors, which are elements of the ecological model?

4. Capacity and Staffing (10 points)

a. Does the applicant demonstrate existing capacity, infrastructure, and evidence of leadership to carry out the required activities? Does the applicant demonstrate an ability to effectively manage and implement the required activities?

b. Does the applicant describe the responsibilities of individual staff members, including their level of effort and allocation of time?

c. Does the applicant describe project staff and their relevant skills and expertise for their assigned tasks relative to this announcement?

5. Evaluation (10 points)

a. Does the applicant provide a detailed description of the methods to be used to evaluate the project? This should include identification of baseline and follow-up measures.

6. Measures of Effectiveness (not scored)

Does the applicant provide objective/quantifiable measures regarding the intended outcomes that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement?

7. Proposed Budget and Justification (not scored)

Does the applicant provide a detailed budget with complete line-item justification of all proposed costs consistent with the stated activities in the program announcement? Details must include a breakdown in the categories of personnel (with time allocations for each), staff travel, communications and postage, equipment, supplies, and any other costs? Does the budget projection include a narrative justification for all required costs? Any sources of additional funding beyond the amount stipulated in this cooperative agreement should be indicated, including donated time or services. For each expense category, the budget should indicate CDC share, the applicant share and any other support. These funds should not be used to supplant existing efforts.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by National Center for Injury Prevention and Control (NCIPC) staff. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel comprised of CDC employees will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above.

In addition, the following factors may affect the funding decision:

CDC seeks to fund organizations working with diverse types of healthcare providers. Therefore, two organizations working with the same or similar constituencies may not be funded.

CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

Anticipated Announcement Date: September 1, 2005

Anticipated Award Date: September 1, 2005

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NOA) from the CDC Procurement and Grants Office. The

NOA shall be the only binding, authorizing document between the recipient and CDC. The NOA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

An additional Certifications form from the PHS5161–1 application needs to be included in your Grants.gov electronic submission only. Refer to *http://www.cdc.gov/od/pgo/funding/PHS5161–1–Certificates.pdf.* Once the form is filled out attach it to your Grants.gov submission as Other Attachments Form.

The following additional requirements apply to this project:

- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
- AR–15 Proof of Non-Profit Status

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness.

f. Additional Requested Information.

2. Annual progress report, due 90 days after the end of the budget period.

a. Current Budget Period Activities Objectives (for second six months of budget period.)

b. New Budget Period Program Proposed Activity Objectives (provides updated logic models and narratives.)

c. Measures of Effectiveness.

d. Additional Requested Information.

3. Financial status report no more than 90 days after the end of the budget period.

4. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Jennifer Middlebrooks, Project Officer, National Center for Injury Prevention and Control, 4770 Buford Highway, NE., Mailstop K–60, Atlanta, GA 30341, Telephone: 770–488–4233, E-mail: *jdanielson@cdc.gov.*

For financial, grants management, or budget assistance, contact: James Masone, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2736, E-mail: *zft2@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–4247 Filed 3–3–05; 8:45 am]

BILLING CODE 4163–18–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10014]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Informatics, Telemedicine, and Education Demonstration Project; *Form No.:* CMS–10014 (OMB# 0938–0806); *Use:* The Informatics, Telemedicine and Education Demonstration Project studies the use of advanced computer and telecommunication technology in the collection of data for diabetes management. It aims to demonstrate the feasibility of a large-scale Web-based system for electronic delivery of health care services that complies with the date security requirements of the Health Insurance Portability and Accountability Act (HIPAA); assess impacts of telemedicine on the process of care for Medicare beneficiaries with diabetes; assess impacts on diabetes related health outcomes; and assess the cost-effectiveness of the telemedicine intervention. The information collection seeks approval for an extension as the demonstration project enters Phase 2. Phase 2 of the project employs new advanced technologies to reduce the public burden associated with the information collection, while maintaining, to the extent possible, continuity of design, eligibility criteria, recruitment and enrollment, intervention, and data collection procedures already established in Phase 1.; *Frequency:* Semi-Annually; *Affected Public:* Business or other not-for-profit, Individuals or households; *Number of Respondents:* 4,100; *Total Annual Responses:* 7,094; *Total Annual Hours:* 12,379.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site

address at *http://www.cms.hhs.gov/regulations/pra,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: William N. Parham, III, Mailstop: C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 18, 2005.

John P. Burke, III,

CMS Paperwork Reduction Act Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group.

[FR Doc. 05–4167 Filed 3–3–05; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4089–N2]

Medicare Program; Meeting of the Advisory Panel on Medicare Education—March 22, 2005: Location Change

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting and meeting location change.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, section 10(a) (Pub. L. 92–463), this notice announces a meeting of the Advisory Panel on Medicare Education (the Panel) on March 22, 2005. The Panel advises and makes recommendations to the Secretary of the Department of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program. This notice replaces the meeting notice published on February 25, 2005 (70 FR 9362) due to a change in the meeting location.

DATES: The meeting is scheduled for March 22, 2005 from 9 a.m. to 4 p.m., e.s.t.

Deadline for Presentations and Comments: March 15, 2005, 12 noon, e.s.t.

ADDRESSES: The meeting location originally published in the February 25, 2005 notice has changed. The new meeting location is the Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW., Washington, DC 20201. Persons planning to attend must follow the security procedures listed below in the ''Meeting Attendance'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Lynne Johnson, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail stop S2–23–05, Baltimore, MD 21244–1850, (410) 786–0090. Please refer to the CMS Advisory Committees' Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.cms.hhs.gov/faca/apme/default.asp*) for additional information and updates on committee activities, or contact Ms. Johnson via e-mail at *ljohnson3@cms.hhs.gov.* Press inquiries are handled through the CMS Press Office at (202) 690–6145.

Meeting Attendance: The meeting is open to the public; however, attendance is limited to space available. Attendance will be determined on a first-come, first-served basis. Persons wishing to attend this meeting, which is located on Federal property, must call or e-mail Ms. Johnson to register in advance no later than 5 p.m. (e.s.t.), Friday, March 18, 2005.

The following information must be e-mailed or telephoned to Ms. Johnson by the date and time above:

- Name(s) of attendee(s);
- Title(s);
- Organization;
- E-mail address(es); and
- Telephone number(s).

Persons attending the meeting must present photographic identification to the Federal Protective Service or Guard Service personnel before they will be allowed to enter the building. Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting.

SUPPLEMENTARY INFORMATION: Section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended, grants to the Secretary of the Department of Health and Human Services (the Secretary) the authority to establish an advisory panel if the Secretary finds the panel necessary and in the public interest. The Secretary signed the charter establishing this Panel on January 21, 1999 (64 FR 7849) and approved the renewal of the charter on January 14, 2005. The Panel advises and makes recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program.

The goals of the Panel are as follows:

- To develop and implement a national Medicare education program that describes the options for selecting a health plan under Medicare.
- To enhance the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships.
- To expand outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.
- To assemble an information base of best practices for helping consumers evaluate health plan options and build a community infrastructure for information, counseling, and assistance.

The current members of the Panel are: Dr. Drew E. Altman, President and Chief Executive Officer, Henry J. Kaiser Family Foundation; James L. Bildner, Chairman and Chief Executive Officer, New Horizons Partners, LLC; Dr. Jane Delgado, Chief Executive Officer, National Alliance For Hispanic Health; Clayton Fong, President and Chief Executive Officer, National Asian Pacific Center on Aging; Thomas Hall, Chairman and Chief Executive Officer, Cardio-Kinetics, Inc.; The Honorable Bobby Jindal, United States Congress; David Knutson, Director, Health System Studies, Park Nicollet Institute for Research and Education; Donald J. Lott, Executive Director, Indian Family Health Clinic; Dr. Frank I. Luntz, President and Chief Executive Officer, Luntz Research Companies; Katherine Metzger, Director, Medicare and Medicaid Programs, Fallon Community Health Plan; David Null, Financial Advisor, Merrill Lynch; Dr. Marlon Priest, Professor of Emergency Medicine, University of Alabama at Birmingham; Susan O. Raetzman, Associate Director, Public Policy Institute, AARP, and Catherine Valenti, Chairperson and Chief Executive Officer, Caring Voice Coalition.

The agenda for the March 22, 2005 meeting will include the following:

- Recap of the previous (November 30, 2004) meeting.
- Centers for Medicare & Medicaid Services update.

• Medicare Modernization Act: Outreach and education strategies.
• Public comment.
• Listening session with CMS leadership.
• Next steps.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to Lynne Johnson, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail stop S2–23–05, Baltimore, MD 21244–1850 or by e-mail at *ljohnson3@cms.hhs.gov* no later than 12 noon, e.s.t., March 15, 2005. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to Ms. Johnson by 12 noon, e.s.t., March 15, 2005. The meeting is open to the public, but attendance is limited to the space available.

Special Accommodation: Individuals requiring sign language interpretation or other special accommodations should contact Ms. Johnson at least 15 days before the meeting.

Authority: Sec. 222 of the Public Health Service Act (42 U.S.C. 217a) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102–3).

Dated: March 1, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–4272 Filed 3–3–05; 8:45 am]

BILLING CODE 4120–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Projects

Title: Evaluation of the Improving Child Welfare Outcome through Systems of Care Grant Program.

OMB No. New Collection

Description: The 1994 Amendments to the Social Security Act (SSA) authorize the U.S. Department of Health and Human Services to review State child and family service programs to ensure conformance with the requirements in titles IV–B and IV–E of SSA. Under the final Rule, which took effect March 25, 2000, States are assessed for substantial conformity with certain Federal requirements for child-welfare services. The Child and Family Service Reviews (CFSR), administered by the Children's Bureau, are designed to ensure conformity with Federal child-welfare requirements and, ultimately, to help States improve child-welfare services and outcomes, specifically safety, permanency and well-being outcomes for child-welfare-involved children and their families. States determined not to have achieved substantial conformity in any of the areas assessed are required to develop and implement Program Improvement Plans (PIP) addressing the areas of nonconformity.

The Systems of Care grant cluster, from which these data are proposed to be collected, is designed to encourage public child-welfare agencies to address the issues identified in their State's CFSR. Although Systems of Care has shown promise in working with various at-risk and family populations, it has not been applied to a child-welfare target population. The data collected from these demonstration sites will allow the Children's Bureau to test whether this approach can help States reach the goals stated in their PIP and explore how child-welfare can benefit from being part of a system of care. Data will be collected via interviews, forms completed by project staff, surveys, focus groups and case-file reviews. Data also will be collected to determine the extent to which the Technical Assistance (A) provided, brokered or contracted by the TA and Evaluation Center is meeting the needs of the grantees, and how.

Respondents: Systems of Care Project Directors (members of the Systems of Care collaborative may include representatives from mental health, juvenile justice, education, health, among others); child-welfare agency supervisors and caseworkers; partner agency caseworkers, and families who have been involved with the child-welfare system.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response (minutes)	Total burden hours
Stakeholder Survey	240	51 items	.29	59
Child-Welfare Agency Survey	1440	72 items	.29	501
Supervisor Interviews	140	5 questions	5	58
Interviews with family members	140	5 questions	5	58
Stakeholder Interviews	140	5 questions	5	58
Project Director Interviews	30	21 questions	[1]4	42
Child-Welfare agency and Partner agency focus groups	700	6 questions	6	420
Community Description Form	20	14 items	2	9
Organizational Structure Form	20	7 items	4	9
Collaborative Membership Form	20	7 items	2	5
Major Activities Form	20	7 items	6	14
Policy Changes Form	20	7 items	6	14
Other Training and Technical Assistance Form	20	4 items	5	7
Training and Technical Assistance Participant Feedback Forms	1080	37 items	.56	373
Technical Assistance Follow-up Survey	518	15	.29	38
Total estimated total annual burden hours				1,665

[1] One hour for entire interview.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 28, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–4236 Filed 3–3–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0525]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Reports of Corrections and Removals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 4, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Reports of Corrections and Removals—21 CFR Part 806 (OMB Control Number 0910–0359)—Extension

The collection of information required under the reports of corrections and removals, part 806 (21 CFR part 806), implements section 519(f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i(f)), as amended by the Food and Drug Administration Modernization Act of 1997 (FDAMA) (21 U.S.C. 301) (Public Law 105–115).

Each device manufacturer or importer under § 806.10 shall submit a written report to FDA of any action initiated to correct or remove a device to reduce a risk to health posed by the device, or to remedy a violation of the act caused by the device which may present a risk to health, within 10 working days of initiating such correction or removal.

Each device manufacturer or importer of a device who initiates a correction or removal of a device that is not required to be reported to FDA under § 806.20 shall keep a record of such correction or removal.

The information collected in the reports of corrections and removals will be used by FDA to identify marketed devices that have serious problems and to ensure that defective devices are removed from the market. This will assure that FDA has current and complete information regarding these corrections and removals and to determine whether recall action is adequate.

In the **Federal Register** of December 14, 2004 (69 FR 74527), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

Respondents to this collection of information are manufacturers and importers of medical devices.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Respondent	Total Hours
806.10	482	1	482	10	4,820
Totals					4,820

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Record-keepers	Annual Frequency per Record	Total Annual Records	Hours per Recordkeeper	Total Hours
806.20	143	1	143	10	1,430
Totals					1,430

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

In 2001, when preparing the earlier package for approval of the information collection requirements in part 806, FDA reviewed the reports of corrections and removals submitted in the previous 3 years under part 7 (21 CFR part 7) (the agency's recall provisions). FDA has determined that estimates of the reporting burden in §§ 806.10 and 806.20 should be revised to reflect a reduction of 29 percent for reports and records submitted under part 7 due to a decrease in recall actions. The time needed to collect information has been reduced by 4 hours per record due to the implementation of a computerized program for information collection requirements in part 806.

Dated: February 25, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–4159 Filed 3–3–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0401]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Customer/Partner Service Surveys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 4, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Customer/Partner Service Surveys—(OMB Control Number 0910–0360)—Extension

Under section 903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393), FDA is authorized to conduct research and public information programs about regulated products and responsibilities of the agency. Executive Order 12862, entitled ''Setting Customer Service Standard,'' directs Federal agencies that ''provide significant services directly to the public'' to ''survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.'' FDA is seeking OMB clearance to conduct a series of surveys to implement Executive Order 12862. Participation in the surveys is voluntary. This request covers customer/partner service surveys of regulated entities, such as the following: Food processors; cosmetic drug, biologic and medical device manufacturers; consumers; and health professionals. The request also covers ''partner'' (State and local governments) customer service surveys.

FDA will use the information from these surveys to identify strengths and weaknesses in service to customers/partners and to make improvements. The surveys will measure timeliness, appropriateness and accuracy of information, courtesy, and problem resolution in the context of individual programs.

FDA projects that approximately 15 customer/partner service surveys will be conducted per year, with a sample of between 50 and 6,000 customers, requiring an average of 18 minutes for review and completion for each survey. Some of these surveys will be repeats of earlier surveys, for purposes of monitoring customer/partner service and developing long-term data.

In the **Federal Register** of September 16, 2004 (69 FR 55823), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Type of Survey	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Respondent	Total Hours
Mail/telephone/fax/web-based	15,000	1	15,000	.30	4,500

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: February 25, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–4160 Filed 3–3–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0498]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Medical Devices; Device Tracking

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by April 4, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on

the information collection are received, OMB recommends that comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Devices; Device Tracking—21 CFR Part 821 (OMB Control Number 0910–0442)—Extension

Section 211 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) became effective on February 19, 1998. It amended the previous medical device tracking provisions in section 519(e)(1) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i(e)(1) and (e)(2) that were added by the Safe Medical Devices Act of 1990 (SMDA) (Public Law 101–629). Unlike the tracking provisions under SMDA, which required tracking for any device meeting certain criteria, FDAMA allows FDA discretion in applying tracking requirements to devices that meet certain criteria and provides that tracking requirements can be imposed only after FDA issues an order. In the **Federal Register** of February 8, 2002 (67 FR 5943), FDA issued a final rule to conform existing tracking regulations to changes in tracking provisions effected by FDAMA (part 821 (21 CFR part 821)).

Current section 519(e)(1) of the act, as amended by FDAMA, provides that FDA may by order require a manufacturer to adopt a method of tracking a class II or class III device, if the device meets one of three criteria: (1) The failure of the device would be reasonably likely to have serious adverse health consequences; (2) the device is intended to be implanted in the human body for more than 1 year (referred to as a ''tracked implant''); or (3) the device is life-sustaining or life-supporting (referred to as a ''tracked l/s-l/s device'') and is used outside a device user facility.

Tracking information is collected to facilitate identifying the current location of tracked devices and patients possessing the devices, to the extent that patients permit the collection of identifying information. Manufacturers and, as necessary, FDA use the data to expedite the recall of distributed devices that are dangerous or defective, and to facilitate the timely notification of patients or licensed practitioners of the risks associated with the devices.

Respondents to this collection of information are manufacturers, importers, and distributors of tracked implants or tracked l/s-l/s devices used outside a device user facility. Distributors include multiple and final distributors, including hospitals.

The regulations include requirements for exemptions and variances; system and content requirements of tracking; obligations of persons other than device manufacturers, e.g., distributors; records and inspection requirements; confidentiality; and record retention requirements.

In the **Federal Register** of November 30, 2004 (69 FR 69604), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
821.2 (also 821.30(e))	4	1	4	12	48
821.25(a)	1	1	1	76	76
821.25(d)	22	1	22	2	44
821.30(a) and (b)	17,000	72	1,222,725	0.1666	203,706
821.30(c)(2)	1	1	1	28	28
821.30(d)	17,000	15	259,186	0.1666	43,180
Total					247,082

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
821.25(b)	229	46,260	10,593,433	0.2899	3,071,036
821.25(c)	229	1	229	63.0	14,430
821.25(c)(3)	229	1,124	257,454	0.2899	74,636
Total					3,160,102

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The annual reporting burden hours to respondents for medical device tracking is estimated to be 247,082 hours, and recordkeeping burdens for respondents is estimated to be 3,160,102 hours. These numbers have been rounded up. The estimates cited in tables 1 and 2 of this document are based primarily upon the data and methods provided in FDA's 1999 assessment entitled ''A Cost Assessment of Medical Device Tracking.'' Using implantation procedures from the National Center for Health Statistics, FDA applied a 2 percent annual growth rate to estimate the number of procedures for tracked implant devices from 1997–2006. The assessment also used unit shipment data in combination with various growth rates to estimate annual/sales distribution for the tracked l/s-l/s devices over the same time period. Additionally, the assessment estimates the industry burden for developing and maintaining tracking systems for these devices from 1997–2006.

For the annual recordkeeping burden, the number of manufacturers subject to device tracking (229) is based on data from FDA's manufacturers database. FDA issued tracking orders to 20 additional manufacturers during the time period 2002–2004. Under § 821.25(c), the additional manufacturers collectively bear a one-time burden of 10,560 hours to develop a device tracking system. FDA's estimate of 17,000 distributor respondents contained in the assessment is derived from Dun & Bradstreet sources on medical equipment wholesalers, retailers, home care dealers, and rental companies. Health Forum, an American Hospital Association Co., provided statistics on hospitals.

Dated: February 25, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–4161 Filed 3–3–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0065]

Risk Assessment of the Public Health Impact from Foodborne Listeria Monocytogenes in Smoked Finfish; and Evaluation of Food Code Provisions That Address Preventive Controls for Listeria Monocytogenes in Retail and Foodservice Establishments; Request for Comments and for Scientific Data and Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments and for scientific data and information.

SUMMARY: The Food and Drug Administration (FDA) is requesting comments and scientific data and information that would assist the agency in its plans to conduct a risk assessment for *Listeria monocytogenes* in smoked finfish (smoked finfish risk assessment), and evaluate the provisions of the 2001 Food Code that address preventive controls for *L. monocytogenes* in retail and foodservice establishments. The purpose of the smoked finfish risk assessment is to ascertain the impact on public health from the reduction and/or prevention of *L. monocytogenes* growth and recontamination during the manufacturing and/or processing of hot- and cold-smoked finfish. The smoked finfish risk assessment and the evaluation of the Food Code provisions for preventive controls for *L. monocytogenes* in retail and foodservice establishments support the agency's commitment to the *Listeria* Action Plan (revised 2003) that FDA and the Centers for Disease Control and Prevention (CDC) developed to reduce *L. monocytogenes* illnesses associated with the consumption of ready-to-eat (RTE) foods.

DATES: Submit comments and scientific data and information by May 3, 2005.

ADDRESSES: Submit written comments and scientific data and information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments, data, and information to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Sherri B. Dennis, Center for Food Safety and Applied Nutrition (HFS–06), Food and Drug Administration, rm. 2B–023, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1903.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Health and Human Services *Healthy People 2010* is a comprehensive set of disease prevention and health promotion objectives for the Nation to achieve over the first decade of the new century. Created by scientists both inside and outside of Government, it identifies a wide range of public health priorities and specific, measurable objectives. One of these objectives calls on Federal food safety agencies to reduce foodborne listeriosis (Ref. 1). In support of this goal, in 2003, FDA issued an assessment of the relative risk to the public health from foodborne *L. monocytogenes* among selected categories of RTE foods (*Listeria* risk assessment) (Ref. 2). The *Listeria* risk assessment formed the basis of the 2003 FDA/CDC *Listeria* Action Plan (Ref. 3), which identifies prevention and control activities that FDA and CDC will take to reduce the incidence of foodborne listeriosis in the United States. The smoked finfish risk assessment and the evaluation of the Food Code (Ref. 4) provisions for preventive controls for *L. monocytogenes* in retail and foodservice establishments are two of these prevention and control activities that support the agency's commitment to fulfilling the *Listeria* Action Plan.

Smoked Finfish Risk Assessment: The 2003 *Listeria* risk assessment used data on food contamination at retail, the ability of the food to support growth, and the impact of home storage time and temperature to estimate the likelihood of a type of food to cause listeriosis. The *Listeria* risk assessment determined that smoked seafood has a relatively high rate of contamination and a high predicted per serving relative risk, yet a lower per annum risk because it is generally consumed only occasionally in small quantities and/or eaten by a relatively small portion of the population.

As a followup to the *Listeria* risk assessment, the smoked finfish risk assessment model will evaluate the sources of contamination, how individual steps in manufacturing and/or processing contribute to contamination, and the effectiveness of various preventative strategies. The objectives of the smoked finfish risk assessment are to evaluate the impact on public health from the reduction/prevention of the following: (1) *L. monocytogenes* growth during the manufacturing and/or processing of smoked finfish, (2) *L. monocytogenes*

growth between the smoking process and distribution at retail, and (3) recontamination with *L. monocytogenes* during the manufacturing and/or processing of smoked finfish.

Listeria monocytogenes contamination is a problem in cold-smoked finfish because the heat applied during processing is not sufficient to inactivate the organism, and the fish are consumed without further cooking. Cold-smoked finfish may become contaminated during processing due to inadequate sanitation, particularly because of insufficient cleaning and sterilizing of the slicer. For hot-smoked finfish, although *L. monocytogenes* is killed by adequate hot-smoking, recontamination after hot-smoking can result in high numbers of the organism in the finished products. Additionally, the ability of the organism to grow under both refrigerated aerobic and anaerobic conditions makes it a concern in products packed in permeable wrappers and under modified atmosphere or vacuum. This sealing of the product extends shelf-life and, therefore, provides additional time for the organism to grow.

Preventive Controls for L. monocytogenes in Retail and Foodservice Establishments: FDA is evaluating the Food Code to determine whether it should consider recommending revisions to the provisions addressing preventive controls for *L. monocytogenes* in retail and foodservice establishments. Specifically, FDA will take the following steps: (1) Review the Food Code to determine whether it should consider recommending revisions to the provisions that address preventive controls, such as approved source, date marking, and cold holding times and temperatures; and (2) in conjunction with the Conference for Food Protection, issue guidance to the retail and food service industries and State and local regulatory professionals on the use of Hazard Analysis Critical Control Point (HACCP) principles to identify and control risk factors contributing to foodborne illness. FDA intends for such guidance to discuss intervention strategies that industry can use to control *L. monocytogenes* and other pathogens.

II. Request for Comments and for Scientific Data and Information

Smoked Finfish Risk Assessment: FDA requests comments on the risk assessment approach outlined previously in this document and the submission of data and any information relevant to this risk assessment. The agency specifically requests information for the following: (1) *L. monocytogenes* levels in raw fish, smoked fish, and finished product; (2) effect of mitigation measures (e.g., ozonation, acidified sodium chlorite) to reduce *L. monocytogenes* levels in raw and finished product; (3) potential for transfer of *L. monocytogenes* to food from contaminated food contact and noncontact surfaces during manufacturing and/or processing (e.g., equipment, workers, floor drains, etc.); (4) potential for transfer of *L. monocytogenes* from the slicer to cold-smoked fish; (5) impact of adding inhibitors (e.g., bacteriocins and bacteriocins-producing bacterial strains or sodium lactate) to smoked finfish to reduce or prevent *L. monocytogenes* growth; (6) impact of frozen versus refrigerated storage conditions on levels of *L. monocytogenes*; (7) impact of time and temperature on levels of *L. monocytogenes* for commercial and home storage conditions of finished product; and (8) effect of training regarding sanitation and hygienic practices on reducing the levels of *L. monocytogenes* in smoked finfish.

Preventive Controls for L. monocytogenes in Retail and Foodservice Establishments: Under the FDA/CDC *Listeria* Action Plan, FDA is continuing its commitment to review the Food Code to determine whether it should consider recommending revisions to the provisions that address preventive controls for *Listeria* in retail and foodservice establishments. The agency specifically requests the following data and information: (1) *L. monocytogenes* levels in products stored in retail and foodservice establishments; (2) levels of environmental contamination and harborage of *L. monocytogenes* on food contact and nonfood contact surfaces in retail and foodservice establishments (e.g., equipment, workers, floor drains, etc.); (3) effects of short- and long-term refrigerated storage on levels of *L. monocytogenes* in retail and foodservice establishments; (4) impact of time and temperature on levels of *L. monocytogenes* in products stored in retail and foodservice establishments; (5) efficacy of cleaning procedures and sanitizing agents on environmental surfaces and utensils; (6) frequency of use and impact of adding inhibitors to food products in retail and foodservice establishments to reduce or prevent *L. monocytogenes* growth; and (7) effect of training regarding hygienic practices and sanitation on levels of *L. monocytogenes* in products in retail and foodservice establishments.

Interested persons should submit comments, scientific data, and information to the Division of Dockets Management (see **ADDRESSES**). Three copies of all comments, scientific data, and information are to be submitted. Individuals submitting written information or anyone submitting electronic comments may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by supporting information. Received submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. Information submitted after the closing date will not be considered except by petition under 21 CFR 10.30.

III. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. U.S. Department of Health and Human Services, *Healthy People 2010*, v. 1. Washington, DC, 2000, *http://www.healthypeople.gov*.

2. U.S. Department of Health and Human Services and U.S. Department of Agriculture/Food Safety and Inspection Service, ''Quantitative Assessment of Relative Risk to Public Health from Foodborne *Listeria monocytogenes* Among Selected Categories of Ready-to-Eat Foods,'' September 2003, *http://www.foodsafety.gov/~dms/lmr2–toc.html*.

3. U.S. Department of Health and Human Services, Food and Drug Administration/Centers for Disease Control and Prevention, ''Reducing the Risk of *Listeria monocytogenes* FDA/CDC 2003 Update of the *Listeria* Action Plan,'' November 2003, *http://www.cfsan.fda.gov/~dms/lmr2plan.html*.

4. U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, *Food Code*, 2001, *http://www.cfsan.fda.gov/~dms/fc01–toc.html*.

Dated: February 25, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–4217 Filed 3–3–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0058]

Hospira, Inc. et al.; Withdrawal of Approval of 76 New Drug Applications and 60 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 76 new drug applications (NDAs) and 60 abbreviated new drug applications (ANDAs) from multiple applicants. The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: April 4, 2005.

FOR FURTHER INFORMATION CONTACT: Florine P. Purdie, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their requests, waived their opportunity for a hearing.

Application No.	Drug	Applicant
NDA 6–095	Tubocurarine Chloride Injection	Hospira, Inc., 275 North Field Dr., Bldg. 2–J45–2, Lake Forest, IL 60045–5046
NDA 6–412	Decapryn (doxylamine succinate) Tablets and Syrup	Aventis Pharmaceuticals, Inc., 200 Crossing Blvd., Bridgewater, NJ 08807–0890
NDA 6–460	Protamine Sulfate Injection USP	Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285
NDA 8–032	Telepaque (iopanoic acid) Tablets	Amersham Health, 101 Carnegie Center, Princeton, NJ 08540
NDA 10–288	Betadine (10% povidone iodine) Solution and Isodine (10% povidone iodine) Solution	The Purdue Frederick Co., One Stamford Forum, Stamford, CT 06901–3431
NDA 11–097	Dimetane (brompheniramine maleate) Elixir	Wyeth Consumer Healthcare, Five Giralda Farms, Madison, NJ 07940
NDA 11–270	Furoxone (furazolidone) Tablets	Shire Laboratories, Inc., c/o Shire Pharmaceutical Development, Inc., 1801 Research Blvd., suite 600, Rockville, MD 20850
NDA 11–323	Furoxone (furazolidone) Oral Suspension	Do.
NDA 11–325	Vesprin (triflupromazine hydrochloride (HCl)) Injection, 10 milligrams (mg)/milliliter (mL) and 20 mg/mL	Apothecon, c/o Bristol-Myers Squibb Co., P.O. Box 4500, Princeton, NJ 08543–4500
NDA 11–367	Enzactin (triacetin) Spray	Wyeth Consumer Healthcare
NDA 12–265	Naqua (trichlormethiazide) Tablets and Naquival (trichlormethiazide and reserpine) Tablets	Schering Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033
NDA 12–320	Rauzide (rauwolfia serpentine with bendroflumethiazide) Tablets and Rautrax-N Tablets	Apothecon, c/o Bristol-Myers Squibb Co.
NDA 12–728	Ortho-Novum 1/50–21 (norethindrone and mestranol) Tablets	Ortho-McNeil Pharmaceuticals, Inc., c/o Johnson & Johnson Research and Development, L.L.C., 920 Route 202 South, Box 300, Raritan, NJ 08869–0602
NDA 16–993	Adsorbotear Ophthalmic Solution	Alcon Laboratories, Inc., 6201 South Freeway, Fort Worth, TX 76134
NDA 17–471	Sodium Pertechnetate Tc–99m (technetium Tc–99m sodium pertechnetate) Solution	Amersham Health
NDA 17–488	Modicon 21 (norethindrone and ethinyl estradiol) Tablets	Ortho-McNeil Pharmaceuticals, Inc., c/o Johnson & Johnson Research and Development, L.L.C.
NDA 17–489	Ortho-Novum 1/35–21 (norethindrone and ethinyl estradiol) Tablets and Neocon Tablets (norethindrone and ethinyl estradiol)	Do.
NDA 17–561	Celstone (betamethasone sodium phosphate USP) Injection	Schering Corp.
NDA 17–601	Optimine (azatadine maleate USP) Tablets	Do.

Application No.	Drug	Applicant
NDA 17–603	Novafed ER (pseudoephedrine HCl) Tablets, 120 mg	Aventis Pharmaceuticals, Inc.
NDA 17–657	Cephulac (lactulose fumarate) Syrup	Do.
NDA 17–661	Tavist (clemastine fumarate) Tablets and Tavist–1 (clemastine fumarate) Tablets	Novartis Consumer Health, Inc., 200 Kimball Dr., Parsippany, NJ 07054–0622
NDA 17–687	Xenon Xe–133 Gas	Amersham Health
NDA 17–700	Gallium Citrate Ga–67 Injection	Do.
NDA 17–773	Technetium Tc–99m MAA Kit	Amersham Health
NDA 17–884	Chronulac (lactulose) Syrup	Aventis Pharmaceuticals, Inc.
NDA 18–030	Dextrose and Sodium Chloride (NaCl) Injection USP	B. Braun Medical, Inc., 2525 McGaw Ave., P.O. Box 19791, Irvine, CA 92623–9791
NDA 18–062	Proventil (albuterol sulfate) Syrup	Schering Corp.
NDA 18–229	Dextrose and NaCl Injection USP	B. Braun Medical, Inc.
NDA 18–269	Isolyte E (multi-electrolyte injection) with 5% Dextrose	Do.
NDA 18–270	Isolyte M (multi-electrolyte injection) with 5% Dextrose	Do.
NDA 18–271	Isolyte R (multi-electrolyte injection) with 5% Dextrose	Do.
NDA 18–273	Isolyte H (multi-electrolyte injection) with 5% Dextrose	Do.
NDA 18–335	Amerscan (technetium Tc–99m medronate) MDP Kit	Amersham Health
NDA 18–358	Dextrose Injection USP, 2.5%	B. Braun Medical, Inc.
NDA 18–386	Dextrose and NaCl Injection USP	Do.
NDA 18–506	Trinalin Repetabs (azatadine maleate and pseudoephedrine sulfate tablets)	Schering Corp.
ANDA 18–621	Nitro-Bid IV (nitroglycerin) Injection, 5 mg/mL	Aventis Pharmaceuticals, Inc.
NDA 18–654	Versed (midazolam HCl) Injection	Hoffman-La Roche, Inc., 340 Kingsland St., Nutley, NJ 07110–1199
NDA 18–675	Tavist (clemastine fumarate) Syrup	Novartis Consumer Health, Inc.
ANDA 18–889	Metronizadole in NaCl Injection	Abbott Laboratories, 200 Abbott Park Rd., D–389 J45–2, Abbott Park, IL 60064–6133
NDA 18–899	Isolyte E (multi-electrolyte injection)	B. Braun Medical, Inc.
NDA 18–924	Aminophylline in 0.45% NaCl Injection	Hospira, Inc.
NDA 18–967	Lidocaine HCl and 5% Dextrose Injection	B. Braun Medical, Inc.
NDA 19–004	Ortho-Novum (nonrethindrone and ethinyl estradiol) 7/14-21 and -28 Tablets	Ortho-McNeil Pharmaceuticals, Inc., c/o Johnson & Johnson Research and Development, L.L.C.
NDA 19–006	Isolyte S, pH 7.4 (multi-electrolyte injection)	B. Braun Medical, Inc.
NDA 19–025	Isolyte P (multi-electrolyte injection) with 5% Dextrose Do.	
NDA 19–033	Bretylium Tosylate Injection	Hospira, Inc.
NDA 19–042	Heparin Sodium in NaCl Injection	B. Braun Medical, Inc.
NDA 19–077	Sterile Water for Injection USP	Do.

Application No.	Drug	Applicant
NDA 19–134	Heparin Sodium in 5% Dextrose Injection	Do.
NDA 19–135	Heparin Sodium in 0.9% NaCl Injection	Do.
NDA 19–243	Proventil (albuterol sulfate) Inhalation Solution	Schering Corp.
NDA 19–471	Cardizem SR Capsules (diltiazem HCl), 60 mg, 90 mg, 120 mg, and 180 mg	Biovail Laboratories, Inc., c/o Biovail Technologies Ltd., 700 Route 202/206 North, Bridgewater, NJ 08807–0980
NDA 19–478	Adalat (nifedipine) Capsules	Bayer Pharmaceuticals Corp., 400 Morgan Lane, West Haven, CT 06516–4175
NDA 19–604	Volmax (albuterol sulfate) Extended- Release Tablets	Muro Pharmaceuticals, Inc., 890 East St., Tewksbury, MA 01876–1496
NDA 19–616	Penetrex (enoxacin) Tablets	Aventis Pharmaceuticals, Inc.
NDA 19–698	Toradol (ketorolac tromethamine) Injection	Roche Palo Alto, LLC, c/o Hoffman-La Roche, Inc., 340 Kingsland St., Nutley, NJ 07110
NDA 19–817	Persantine (dipyridamole) Injection	Boehringer Ingleheim Pharmaceuticals, Inc., 900 Ridgebury Rd., P.O. Box 368, Ridgefield, CT 06877–0368
NDA 19–978	Bupivacaine HCl Injection USP	Hospira, Inc.
NDA 20–542	Dopamine HCl in 5% Dextrose Injection	Do.
NDA 20–677	Zagam (sparfloxacin) Tablets, 200 mg	Mylan Pharmaceuticals, Inc., 781 Chestnut Ridge Rd., P.O. Box 4310, Morgantown, WV 26504–4310
NDA 20–755	Caverject (alprostadil) Injection	Pfizer, Inc., 7000 Portage Rd., Kalamazoo, MI 49001
NDA 20–942	Versed (midazolam HCl) Syrup, 2 mg/mL	Hoffman-La Roche, Inc.
NDA 20–997	Chirocaine (levobupivacaine HCl) Injection	Purdue Pharma L.P., One Stamford Forum, Stamford, CT 06901–3431
NDA 50–010	Ilosone (erythromycin estolate oral suspension) Liquid	Eli Lilly & Co.
NDA 50–011	Pathocil (dicloxacillin sodium) Capsules	Wyeth Pharmaceuticals, P.O. Box 8299, Philadelphia, PA 19101–8299
NDA 50–199	Unipen (nafcillin sodium) Powder for Oral Solution	Do.
NDA 50–271	Achromycin (tetracycline HCl) Powder for Reconstitution	Lederle, c/o Wyeth Pharmaceuticals, P.O. Box 8299, Philadelphia, PA 19101–8299
NDA 50–320	Unipen (nafcillin sodium) Injection	Wyeth Pharmaceuticals
NDA 50–365	Ilosone (erythromycin estolate USP) Pulvules	Eli Lilly & Co.
NDA 50–369	Ilotycin (erythromycin) Tablets	Do.
NDA 50–426	Ilosone (erythromycin estolate USP) Tablets	Do.
NDA 50–427	Minocin (minocycline HCl) Diagnostic Susceptibility Powder	Lederle, c/o Wyeth Pharmaceuticals
NDA 50–437	Garamycin (gentamicin sulfate) Injection, 10 mg/mL	Schering Corp.
NDA 50–462	Unipen (nafcillin sodium) Tablets	Wyeth Pharmaceuticals
NDA 50–505	Garamycin (gentamicin sulfate) Injection, 2 mg/mL	Schering Corp.
NDA 50–549	Mezlin (mezlocillin sodium monohydrate) Sterile Powder for Injection	Bayer Pharmaceuticals Corp.

Application No.	Drug	Applicant
ANDA 60–134	Ledercillin VK (penicillin V potassium) Tablets, 250 mg and 500 mg	Lederle Laboratories, Pearl River, NY 10965
ANDA 60–136	Ledercillin VK (penicillin V potassium) for Oral Suspension, 125 mg/5 mL and 250 mg/5 mL	Do.
ANDA 60–413	Penicillin G Potassium Tablets	Wyeth Laboratories
ANDA 60–431	Ilosone (erythromycin estolate USP) Chewable Tablets	Lilly Research Laboratories, Lilly Corporate Center, Indianapolis, IN 46285
ANDA 60–559	Ilosone (erythromycin estolate) Oral Suspension Liquid	Do.
ANDA 60–625	Omnipen (ampicillin for oral suspension USP) for Oral Suspension	Wyeth Laboratories
ANDA 60–626	Omnipen-N (ampicillin sodium) Injection, 125 mg, 250 mg, 500 mg, 1 gram (g), and 2 g/vial	Do.
ANDA 61–655	Kantrex (kanamycin sulfate) Injection	Apothecon, c/o Bristol-Myers Squibb Co.
ANDA 61–675	Wyamycin S (erythromycin stearate tablets USP), 250 mg and 500 mg	Wyeth Laboratories
ANDA 61–685	Tetracycline HCl Capsules USP, 250 mg and 500 mg	Do.
ANDA 61–769	Cephapirin for Injection USP	Apothecon, c/o Bristol-Myers Squibb Co.
ANDA 61–893	Ilosone (erythromycin estolate USP) for Oral Suspension	Dista, c/o Lilly Research Laboratories, Lilly Corporate Center, Indianapolis, IN 46285
ANDA 61–894	Ilosone (erythromycin estolate) Oral Suspension	Do.
ANDA 61–895	Ilosone (erythromycin estolate USP) Chewable Tablets	Do.
ANDA 61–896	Ilosone (erythromycin estolate USP) Tablets	Do.
ANDA 61–897	Ilosone (erythromycin estolate USP) Pulvules	Do.
ANDA 61–910	Ilotycin (erythromycin) Enteric Coated Tablets	Do.
ANDA 62–123	Wyamycin E (erythromycin ethylsuccinate) Oral Suspension, 200 mg/5 mL and 400 mg/5 mL	Wyeth Laboratories
ANDA 62–131	Wymox (amoxicillin) for Oral Suspension	Do.
ANDA 62–501	Gentacidin Ophthalmic Ointment (gentamicin sulfate ophthalmic ointment USP) 0.3%	Novartis Ophthalmics, Inc., 11695 John Creek Pkwy., Duluth, GA 30097–1523
ANDA 62–544	Dexacidin (neomycin sulfate, polymyxin B sulfate, and dexamethasone) Ophthalmic Suspension	Novartis Pharmaceuticals Corp., One Health Plaza, Building 105 Eisenhower, East Hanover, NJ 07936
ANDA 62–566	Dexacidin (neomycin sulfate, polymyxin B sulfate, and dexamethasone) Ophthalmic Ointment	Novartis Ophthalmics, Inc.
ANDA 62–717	Unipen (nafcillin sodium) Injection, 500–mg, 1–g, and 2–g vials	Wyeth Laboratories
ANDA 62–718	Omnipen-N (ampicillin sodium) Injection, 125–mg, 250–mg, 500–mg, 1–g, and 2–g vials	Do.
ANDA 62–726	Kenamycin Sulfate Capsules USP, 500 mg	Apothecon, c/o Bristol-Myers Squibb Co.
ANDA 62–986	Cephalexin For Oral Suspension USP, 125 mg/5 mL	Do.
ANDA 63–107	Emgel (erythromycin) Topical Gel, 2%	GlaxoSmithKline Consumer Healthcare, L.P., 1500 Littleton Rd., Parsippany, NJ 07054–3884

Application No.	Drug	Applicant
ANDA 71–159	Nitro-Bid (nitroglycerin) Injection, 10 mg/mL	Aventis Pharmaceuticals, Inc.
ANDA 74–194	Loperamide HCl Tablets, 2 mg	L. Perrigo Co., 515 Eastern Ave., Allegan, MI 49010
ANDA 74–539	Tamoxifen Citrate Tablets USP, 10 mg	Pharmachemie B.V., c/o Teva Pharmaceuticals, 1090 Horsham Rd., P.O. Box 1090, North Wales, PA 19454–1090
ANDA 75–114	Acyclovir Injection, 50 mg/mL	Abbott Laboratories
ANDA 75–583	Enalapril Maleate Tablets USP, 2.5 mg, 5 mg, 10 mg, and 20 mg	Apothecon Inc., c/o Bristol-Myers Squibb Co.
ANDA 75–729	Famotidine Injection, 0.4 mg/mL	Abbott Laboratories
ANDA 76–214	Sotalol HCl Tablets, 80 mg, 120 mg, and 160 mg	TorPharm, c/o Apotex Corp., 616 Heathrow Dr., Lincolnshire, IL 60069
ANDA 83–823	Nicolar (niacin) Tablets, 500 mg	Aventis Pharmaceuticals, Inc.
ANDA 83–892	Selenium Sulfide Lotion USP	Allergan, 2525 Dupont Dr., P.O. Box 19534, Irvine, CA 92623
ANDA 84–476	Domeboro (acetic acid, glacial and aluminum acetate) SolutionBayer Pharmaceuticals Corp.	
ANDA 85–113	Chlordiazepoxide HCl Capsules USP, 10 mg	Impax Laboratories, Inc., 30831 Huntwood Ave., Hayward, CA 94544
ANDA 85–187	Slo-Phyllin (theophylline) Syrup, 80 mg/15 mL	Aventis Pharmaceuticals, Inc.
ANDA 85–202	Slo-Phyllin (theophylline) Tablets, 100 mg	Do.
ANDA 85–204	Slo-Phyllin (theophylline) Tablets, 200 mg	Do.
ANDA 86–126	Nitrong SR (nitroglycerin) Tablets, 6.5 mg	Do.
ANDA 86–137	Nitrong (nitroglycerin) Ointment, 2%	Do.
ANDA 86–138	Nitrong (nitroglycerin) Tablets, 2.6 mg	Do.
ANDA 86–681	Acetaminophen and Codeine Phospate Tablets USP, 300 mg/30 mg	Purepac Pharmaceutical Co., 200 Elmora Ave., Elizabeth, NJ 07207
ANDA 87–715	Nitrong SR (nitroglycerin) Tablets, 9 mg	Do.
ANDA 87–892	Slo-Bid (theophylline) Capsules, 100 mg	Aventis Pharmaceuticals, Inc.
ANDA 87–893	Slo-Bid (theophylline) Capsules, 200 mg	Do.
ANDA 87–894	Slo-Bid (theophylline) Capsules, 300 mg	Do.
ANDA 88–082	Hydrocortisone USP, Micronized Powder (Nonsterile)	Paddock Laboratories, Inc., 3940 Quebec Ave. South, Minneapolis, MN 55427
ANDA 88–269	Slo-Bid (theophylline) Capsules, 50 mg	Aventis Pharmaceuticals, Inc.
ANDA 88–782	NTS 5 (nitroglycerin) Transdermal Systems	Hercon Laboratories Corp., 101 Sinking Springs Lake, P.O. Box 467, Emigsville, PA 17318
ANDA 88–783	NTS 15 (nitroglycerin) Transdermal Systems	Do.
ANDA 88–791	Vasocidin (sulfacetamide sodium and prednisolone acetate) Ophthalmic Ointment	Novartis Ophthalmics, Inc.
ANDA 89–047	Sulf–15 (sulfacetamide sodium ophthalmic solution USP), 15%	Do.
ANDA 89–516	NTS 10 (nitroglycerin) Transdermal Systems	Hercon Laboratories Corp.
ANDA 89–539	Slo-Bid (theophylline) Capsules, 75 mg	Aventis Pharmaceuticals, Inc.
ANDA 89–540	Slo-Bid (theophylline) Capsules, 125 mg	Do.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research, by the Commissioner, approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective April 4, 2005.

Dated: January 31, 2005.

Steven Galson,

Acting Director, Center for Drug Evaluation and Research.

[FR Doc. 05–4158 Filed 3–3–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0554]

Revised Compliance Policy Guide Regarding Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of draft revisions to Compliance Policy Guide (CPG) Sec. 110.310 entitled ''Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002.'' The CPG provides written guidance to FDA and Customs and Border Protection (CBP) staff on enforcement of section 307 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) and the agency's implementing regulations, which require prior notice for food imported or offered for import into the United States. The CPG has been revised to provide additional guidance to FDA and CBP staff regarding specific situations covering routine shipments of food that are transported through the United States, arriving from and exiting to the same country, and regarding the Harmonized Tariff Schedule (HTS) code that is part of the planned shipment information.

DATES: The draft revisions to the CPG are found in section C, items 7 and 8. Submit written or electronic comments concerning the draft revisions to the CPG by April 4, 2005. You may submit written or electronic comments on the other sections of the CPG at any time.

ADDRESSES: Submit written requests for single copies of the revised guidance to the Division of Compliance Policy (HFC–230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the guidance may be sent.

Submit written comments on the guidance to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Domenic Veneziano, Office of Regulatory Affairs (HFC–100), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 703–621–7809.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft revision to CPG Sec. 110.310 entitled ''Prior Notice of Imported Food Under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002.'' This revised guidance is issued with CBP concurrence and explains to FDA and CBP staff the new FDA and CBP policies on enforcement of section 307 of the Bioterrorism Act and its implementing regulations, which require prior notice to FDA of all food imported or offered for import into the United States (21 CFR part 1.276 through 1.285).

FDA is considering taking these steps while the prior notice final rule is under development to provide additional flexibility in filing prior notice when, due to the geography, the only practical transportation route available for the shipment is through the United States and when there is a prior notice violation because the prior notice does not include the 6-digit HTS code for the article of food.

FDA is issuing the revisions to the CPG as level 1 draft guidance consistent with FDA's good guidance practices regulation § 10.115 (21 CFR 10.115). The draft revisions to the CPG represent the agency's current thinking on its enforcement policy concerning prior notice. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. The draft revisions to the CPG are found in section C, items 7 and 8.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the revised CPG. Submit a single copy of electronic copies or two copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The revised CPG and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

An electronic version of the revised CPG is available on the Internet at *http://www.fda.gov/ora* under ''Compliance References.''

Dated: February 24, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–4218 Filed 3–3–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Organ Transplantation; Request for Nominations for Voting Members

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill up to 13 vacancies on the Advisory Committee on Organ Transplantation (ACOT). The ACOT was established by the Amended Final Rule of the Organ Procurement and Transplantation Network (OPTN) (42 CFR Part 121) and, in accordance with Pub. L. 92–463, was chartered on September 1, 2000.

DATES: The agency must receive nominations on or before April 4, 2005.

ADDRESSES: All nominations should be submitted to the Executive Director, Advisory Committee on Organ Transplantation, Healthcare Systems Bureau, HRSA, Parklawn Building, Room 12C–06, 5600 Fishers Lane, Rockville, Maryland 20857. Federal Express, Airborne, UPS, etc., mail delivery should be addressed to Executive Director, Advisory Committee on Organ Transplantation, Healthcare Systems Bureau, HRSA, at the above address.

FOR FURTHER INFORMATION CONTACT: Thomas E. Balbier, Jr., Executive Director, Advisory Committee on Organ Transplantation, at (301) 443–1896 or e-mail *Thom.Balbier@hrsa.hhs.gov* or Sherry Whipple, Public Health Analyst, Division of Transplantation, at (301) 443–2764 or e-mail *Sherry.Whipple@hrsa.hhs.gov.*

SUPPLEMENTARY INFORMATION: As provided by 42 CFR 121.12 (64 FR 56661), the Secretary established the Advisory Committee on Organ Transplantation. The Committee is governed by the Federal Advisory Committee Act (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

The ACOT advises the Secretary, acting through the Administrator, HRSA, on all aspects of organ procurement, allocation, and transplantation, and on other such matters that the Secretary determines. One of its principal functions shall be to advise the Secretary on ways to maximize Federal efforts to increase living and deceased organ donation nationally. Matters that may be reviewed by the ACOT include the following:

- Proposed enforceable OPTN policies submitted for Secretarial approval;
- Organ allocation policies of the OPTN;
- The OPTN's system of collecting, disseminating and ensuring the validity, accuracy, timeliness and usefulness of data;
- The current state of knowledge regarding transplantation; and
- Additional medical, public health, ethical, legal, coverage and financing issues and socioeconomic issues relevant to transplantation.

The ACOT consists of up to 25 members, including the Chair. Members and Chair shall be selected by the Secretary from individuals knowledgeable in such fields as organ donation, health care public policy, transplantation medicine and surgery, critical care medicine and other medical specialties involved in the identification and referral of donors, non-physician transplant professions, nursing, epidemiology, immunology, law and bioethics, behavioral sciences, economics and statistics, as well as representatives of transplant candidates, transplant recipients, organ donors, and family members. To the extent practicable, Committee members should represent the minority, gender and geographic diversity of transplant candidates, transplant recipients, organ donors and family members served by the OPTN. In addition, the Director, Centers for Disease Control and Prevention; the Administrator, Centers for Medicare and Medicaid Services; the Commissioner, Food and Drug Administration; and the Director, National Institutes of Health (or the designees of such officials) serve as non-voting ex officio members.

Specifically, HRSA is requesting nominations for up to 13 voting members of the ACOT representing: Thoracic transplant surgery, thoracic transplant medicine (physicians), liver transplant surgery, pediatrics, ethics, organ procurement organizations, transplant candidates/recipients, and transplant/donor family members. Nominees will be invited to serve a 4-year term beginning approximately July 27, 2005, and ending July 26, 2009.

HHS will consider nominations of all qualified individuals with a view to ensuring that the Advisory Committee includes the areas of subject matter expertise noted above. Individuals may nominate themselves or other individuals, and professional associations and organizations may nominate one or more qualified persons for membership on the ACOT. Nominations shall state that the nominee is willing to serve as a member of the ACOT and appears to have no conflict of interest that would preclude the ACOT membership. Potential candidates will be asked to provide detailed information concerning financial interests, consultancies, research grants, and/or contracts that might be affected by recommendations of the Committee to permit evaluation of possible sources of conflicts of interest.

A nomination package should include the following information for each nominee: (1) A letter of nomination stating the name, affiliation, and contact information for the nominee, the basis for the nomination (*i.e.*, what specific attributes recommend him/her for service in this capacity), and the nominee's field(s) of expertise; (2) a biographical sketch of the nominee and a copy of his/her curriculum vitae; and (3) the name, return address, and daytime telephone number at which the nominator can be contacted.

The Department of Health and Human Services has special interest in assuring that women, minority groups, and the physically disabled are adequately represented on advisory committees; and therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or disabled candidates.

Dated: February 24, 2005.

Elizabeth M. Duke,

Administrator.

[FR Doc. 05–4223 Filed 3–3–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting; Interagency Autism Coordinating Committee

The National Institutes of Health (NIH) hereby announces a meeting of the Interagency Autism Coordinating Committee to be held on May 16, 2005, on the NIH campus in Bethesda, Maryland.

The Children's Health Act of 2000 (Pub. L. 106–310), Title I, Section 104, mandated the establishment of an Interagency Autism Coordinating Committee (IACC) to coordinate autism research and other efforts within the Department of Health and Human Services (HHS). In April 2001, the HHS Secretary delegated the authority to establish the IACC to the NIH. Within the NIH, the National Institute of Mental Health (NIMH) is the designated lead for this activity.

The IACC meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below in advance of the meeting.

Name of Committee: Interagency Autism Coordinating Committee.

Date: May 16, 2005.

Time: 9 a.m.–4:30 p.m.

Agenda: Discussion of autism activities across Federal agencies.

Place: National Institutes of Health, 31 Center Drive, Building 31, Conference Room 10 (6th floor), Bethesda, Maryland 20892.

Contact Person: Ann Wagner, PhD, Division of Services and Intervention Research, NIMH, NIH, 6001 Executive Boulevard, Room 7142, MSC 9633, Bethesda, Maryland 20892, E-mail: *awagner@mail.nih.gov,* Phone: 301–443–4283.

Any member of the public interested in presenting oral comments to the Committee may notify Dr. Wagner, as listed above, at least 5 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. Presentations may be limited to 5 minutes; we request both printed and electronic copies for the record. In addition, any interested person may file written comments with the Committee by forwarding his or her statement to Dr.

Wagner, as listed above. The statement should include the name, address, telephone number, and, when applicable, the business or professional affiliation of the interested person.

Information about the meeting and online registration forms are also available on the NIMH homepage at *http://www.nimh.nih.gov/autismiacc/index.cfm.*

Dated: February 23, 2005.

Raynard S. Kington,

Deputy Director, National Institutes of Health.

[FR Doc. 05–4171 Filed 3–3–05; 8:45 am]

BILLING CODE 4140–01–P

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: Cross-Site Process Evaluation of the Collaborative Initiative To Help End Chronic Homelessness—New

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services (CMHS) and Center for Substance Abuse Treatment (CSAT) will fund an evaluation of the Collaborative Initiative to End Chronic Homelessness (CHI). The CHI is assisting unaccompanied homeless individuals with a disabling condition who have been continuously homeless for one year or had at least four episodes of homelessness in the past three years to achieve permanent housing and make use of supportive services. Within SAMHSA, CMHS will be the lead Center.

This evaluation will monitor and describe the implementation and progress of the 11 local projects of the Initiative. A cross-site process evaluation is needed to assure a high level of accountability and to describe and analyze the critical elements of the projects that influence the clients, the services, and the system outcomes, using the same research methods for all sites. SAMHSA will conduct an evaluation by including a site-by-site description of critical project elements including qualitative descriptive information on the: project context, target population, engagement activities, housing, service delivery model, staffing, service integration, systems integration, and community planning.

Data collection will be conducted over a 36-month period. At each project site a series of measures will be used to assess: (1) How chronically homeless clients are assisted in obtaining permanent housing and supportive services, (2) how clients are maintained in permanent housing and supportive services, (3) how the project affects client quality of life, (4) how the project expands or enhances the existing service system in the short-term and long-term, (5) how the project extends its reach to beyond the original number of clients and project funding, (6) how the project develops structures to sustain itself after grant funding ends, and (7) how the project influences local policy related to homelessness.

Data collection instruments are semi-structured and will be administered by trained evaluation staff. Annual interviews will be conducted with key informants associated with the projects through annual visits to project sites and telephone interviews. Focus groups with project consumers will be conducted during annual visits. One-page activity checklists will be required every other month from a random sample of project staff (staff may be randomly selected more than once each year). Project documentation from project advisory and managerial groups (*e.g.*, meeting minutes) will be reviewed for evidence of service system and policy change.

The estimated annual response burden to collect this information is as follows:

Instrument	Number of respondents	Responses/ respondent	Burden/ response (hrs)	Annual burden (hrs)
Project Coordinator Interview	11	1	1.5	17
Team Lead Interview	11	1	2	22
Clinician Interview	11	1	1	11
Case Manager Interview	33	1	2	66
Property Manager Interview	11	1	.5	6
Advisory Board Member Interview	11	1	1.2	13
Partner Agency/subcontractor Interview	33	1	1.2	40
Outside Stakeholder Interview	11	1	.75	8
Consumer Focus Group	66	1	1.5	99
Activity Checklist**	66	3	.5	99
Total Annual*	264	.....	.....	380

* Sums and averages are rounded up to nearest integer.

** These respondents are selected from the same staff as the interviews above (project coordinator, team lead, clinician, case manager).

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 71–1045, One Choke Cherry Road, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: February 28, 2005.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 05–4242 Filed 3–3–05; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

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

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, 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 proposed continuing collection of information. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning information collections required for Fire Management Assistance Grant Program (FMAGP) eligibility determinations, grants management, and compliance with other Federal laws and regulations,

SUPPLEMENTARY INFORMATION: FMAGP was established under Section 420 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42, U.S.C. 5187, as amended by section 303 of the Disaster Mitigation Act of 2000, and implemented under 44 CFR Part 204. The program authorizes the President to provide assistance to any State or local government for the mitigation, management, and control of any fire on public or private forestland or grassland that threatens such destruction, as would constitute a major disaster. The information collection is necessary to facilitate the provision of assistance under the FMAGP, and is used by both State and FEMA Regional staff to facilitate the declaration request and grant administration of the program, as well as end of year internal reporting of overall declaration requests and estimated grant outlays.

Collection of Information

Title: Fire Management Assistance Grant Program.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0058.

Form Numbers: FEMA Form 90–58, Request for Fire Management Assistance Declaration, FEMA Form 90–133, Request for Fire Management Assistance Subgrant, and FEMA Form 90–32, Principal Advisor's Report.

Abstract: The collection of information is used by both State and FEMA Regional staff to facilitate the declaration request and grant administration processes of FMAGP, as well as end of year internal reporting of overall declaration requests and estimated grant outlays. The following information collections are used:

FEMA-State Agreement and Amendment. Federal assistance under Section 420 of the Stafford Act must be provided in accordance with the FEMA-State Agreement for FMAGP. The State Governor and the Regional Director must sign the Agreement, which contains the necessary terms and conditions consistent with the provisions of applicable laws, executive orders, and regulations, and specifies the type and extent of Federal assistance to be provided. The Agreement is an annual agreement applicable only for the calendar year in which it is signed.

Amendments to the FEMA-State Agreement may be executed throughout the calendar year as necessary. One amendment, Exhibit E, must be completed upon each approval of a fire management assistance declaration. Exhibit E confirms the name, incident period, location, and official designation number of the fire. Other amendments modifying the standing agreement may be added throughout the year to reflect changes in the program or signatory parties.

FEMA Form 90–133, Request for Fire Management Assistance Subgrant, is used by State, local and tribal governments to state their interest in applying for sub-grants under a approved fire management assistance grant. The form provides essential subgrantee contact information.

FEMA Form 90–58, Request for Fire Management Assistance Declaration, is used by the State to provide information in support of its request for a fire management assistance declaration. This form must be completed by the Governor or Governor's Authorized Representative (GAR) and forwarded to FEMA's Regional Director for review and transmittal to FEMA's National Office in Washington DC. Additional supporting information may be furnished by the State or requested by FEMA after the initial request has been received.

FEMA Form 90–32, Principal Advisor's Report, form is used to provide FEMA with technical assessment of a fire or fire complex for which the State is requesting a fire management assistance declaration. FEMA will review all information submitted in the State's request along with the Principal Advisor's assessment and Regional summary and will render a determination.

A State Administrative Plan for FMAGP must be developed by the State for the administration of fire management assistance grants. The plan must describe the procedures for the administration of FMAGP, designate the State agency to serve as Grantee, and ensure State compliance with the provisions of law and regulation applicable to fire management assistance grants. The plan must also identify staffing functions, the sources of staff to fill these functions, and the management and oversight responsibilities of each. The plan should describe the procedures to notify potential applicants of the availability of the program, assist FEMA in determining applicant eligibility, review PWs, process payment of subgrants, and audit and reconcile subgrants. The plan should also outline the processes to be used to facilitate close-out of the fire management assistance grant in accordance with 44 CFR, Part 13, Subpart D. The Regional Director must ensure that the State has an up-to-date Administrative Plan or approve a new plan prior to approval of the SF 424. The State may request the Regional Director to provide technical assistance in the preparation of the State Administrative Plan.

Training sessions are provided primarily for Regional staff and State officials who administer FMAGP for the purpose of instructing and updating attendees on the laws, regulations, policies, and process that govern the program, as well as to discuss any program issues.

Appeals. When a State's request for a fire management assistance declaration is denied, the Governor of a State or GAR may appeal the decision in writing pursuant to 44 CFR 204.26. The State may submit this one-time request for reconsideration in writing, with additional information, to the Director, Recovery Division. The appeal must be submitted within 30 days of the date of the letter denying the State's/Indian tribal government's request. A time

extension of 30 days may be granted by the Director if the Governor or GAR submits a written request for a time extension within the 30-day period. Similarly, applicants may appeal any cost or eligibility determination under an approved declaration within 60 days after receipt of the notice of the action that is being appealed. The request must be submitted in writing to FEMA through the Grantee in accordance with the appeal procedures detailed in 44 CFR 204.60. Appeals usually consist of a letter briefly describing the reason for the appeal and any new supporting documentation the State or applicant submits to FEMA for review.

Duplication of Benefits. Applicants are required to notify FEMA of all benefits, actual or anticipated, received from other sources for the same loss for which they are applying to FEMA for assistance. Notification can be accomplished in a letter, accompanied by supporting documentation.

Affected Public: State, Local or Tribal Government and Federal Government.

Estimated Total Annual Burden Hours: 664.

OMB NO. 1660–0058, FIRE MANAGEMENT ASSISTANCE GRANT PROGRAM ANNUAL BURDEN HOURS

Project/activity (survey, form(s), focus group, etc.)	Number of respondents (A)	Frequency of responses (B)	Burden hours per respondent (C)	Annual responses	Total annual burden hours
FEMA-State Agreement and Amendment	12	4	5 minutes	48	4
State Administrative Plan for Fire Management Assistance.	12	4	8 hours	48	384
FEMA Form 90–32, Principal Advisor's Report	12	4	20 minutes	48	16
FEMA Form 90–58, Request for Fire Management Assistance Declaration.	12	4	1 hour	48	48
FEMA Form 90–133, Request for Fire Management Assistance Subgrant (Locals Only).	24	4	10 minutes	96	16
Appeals (10 States and 10 Locals)	20	[1] 1	1 hour	20	20
Duplication of Benefits (10 State States and 10 Locals).	20	[1] 1	1 hour	20	20
Training Sessions	12	[1] 1	13 hours	12	156
Total Burden Estimate			24.6 hours	328	664

[1] Annually.

Estimated Cost: The information collection process for FMAGP is managed by one Program Manager, under a State's Department of Emergency Management or Department of Forestry. The annualized cost to respondents is estimated to be $16,163 annually. This is based on an hourly wage rate of $23.65 (Bureau of Labor Services) for a State's Program Manager, spending 23.35 burden hours to manage the application and grants process for the FMAGP. There is no capital start-up cost or capital maintenance costs

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Ann Piesen, Program Specialist, Recovery Division, (202) 646–3925, for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov*.

George S. Trotter,

Acting Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 05–4194 Filed 3–3–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1582–DR]

American Samoa; Major Disaster and Related Determinations

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

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Territory of American Samoa (FEMA–1582–DR), dated February 18, 2005, and related determinations.

DATES: *Effective Date:* February 18, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 18, 2005, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Territory of American Samoa, resulting from Tropical Cyclone Olaf, including high winds, high surf, and heavy rainfall, beginning on February 15, 2005, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the Territory of American Samoa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program and Hazard Mitigation in the designated areas; and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under this program will also be limited to 75 percent of the total eligible costs. You are authorized to make adjustments as warranted to the non-Federal cost shares as provided under the Insular Areas Act, 48 U.S.C. 1469a(d).

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Alexander S. Wells, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the Territory of American Samoa to have been affected adversely by this declared major disaster:

Debris removal and emergency protective measures (Categories A and B) under the Public Assistance program for the Territory of American Samoa. Direct Federal assistance is authorized.

All islands within the Territory of American Samoa are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–4183 Filed 3–3–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1582–DR]

American Samoa; Amendment No. 1 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Territory of American Samoa (FEMA–1582–DR), dated February 18, 2005, and related determinations.

EFFECTIVE DATE: February 21, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 21, 2005.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–4184 Filed 3–3–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1581–DR]

Arizona; Major Disaster and Related Determinations

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

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arizona (FEMA–1581–DR), dated February 17, 2005, and related determinations.

EFFECTIVE DATE: February 17, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 17, 2005, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Arizona, resulting from severe storms and flooding on December 28, 2004, through January 12, 2005, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Arizona.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas, and any other forms of assistance under the Stafford Act you may deem appropriate. Direct Federal assistance is authorized, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that

pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Sandy Coachman, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Arizona to have been affected adversely by this declared major disaster:

Coconino, Gila, Mohave, Navajo, and Yavapai Counties; the Hopi Tribal Nation, and the portion of the Navajo Tribal Nation within the State of Arizona for Public Assistance. Direct Federal assistance is authorized, if warranted.

Apache, Coconino, Gila, Mohave, Navajo, and Yavapai Counties; the Hopi Tribal Nation, and the portion of the Navajo Tribal Nation within the State of Arizona are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–4191 Filed 3–3–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3200–EM]

Connecticut; Amendment No. 1 to Notice of an Emergency Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Connecticut (FEMA–3200–EM), dated February 17, 2005, and related determinations.

EFFECTIVE DATE: February 25, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as authorized by the President in a letter dated February 17, 2005, FEMA is extending the time period for emergency protective measures (Category B) under the Public Assistance program from 48 hours to 72 hours. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

(Catalog of Federal Domestic Assistance No. 97.036, Disaster Assistance)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–4185 Filed 3–3–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3200–EM]

Connecticut; Emergency and Related Determinations

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

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Connecticut (FEMA–3200–EM), dated February 17, 2005, and related determinations.

EFFECTIVE DATE: February 17, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 17, 2005, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the impact in certain areas of the State of Connecticut, resulting from the record snow on January 22–23, 2005, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of Connecticut.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Connecticut to have been affected adversely by this declared emergency:

The counties of Fairfield, Hartford, Litchfield, Middlesex, New Haven, New London, Tolland, and Windham for emergency protective measures (Category B) under the Public Assistance for a period of 48 hours.

(Catalog of Federal Domestic Assistance No. 97.036, Disaster Assistance)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–4190 Filed 3–3–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3199–EM]

Illinois; Amendment No. 1 to Notice of an Emergency Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Illinois (FEMA–3199–EM), dated February 1, 2005, and related determinations.

EFFECTIVE DATE: February 22, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Justo Hernandez, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Scott Wells as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–4189 Filed 3–3–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1579–DR]

Kansas; Amendment No. 1 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Kansas (FEMA–1579–DR), dated February 8, 2005, and related determinations.

EFFECTIVE DATE: February 22, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Kansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 8, 2005:

Brown, Jackson, Kiowa, Leavenworth, McPherson, and Pottawatomie Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–4187 Filed 3–3–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3201–EM]

Massachusetts; Emergency and Related Determinations

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

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the Commonwealth of Massachusetts (FEMA–3201–EM), dated February 17, 2005, and related determinations.

EFFECTIVE DATE: February 17, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 17, 2005, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the impact in certain areas of the Commonwealth of Massachusetts, resulting from the record and/or near record snow on January 22–23, 2005, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the Commonwealth of Massachusetts.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 72 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the Commonwealth of Massachusetts to have been affected adversely by this declared emergency:

The counties of Barnstable, Berkshire, Bristol, Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Nantucket, Norfolk, Plymouth, Suffolk, and Worcester for emergency protective measures (Category B) under the Public Assistance program for a period of 72 hours.

(Catalog of Federal Domestic Assistance No. 97.036, Disaster Assistance)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–4193 Filed 3–3–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3204–EM]

Nevada; Emergency and Related Determinations

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

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Nevada (FEMA–3204–EM), dated February 23, 2005, and related determinations.

EFFECTIVE DATE: February 23, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 23, 2005, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the impact in certain areas of the State of Nevada, resulting from the record and/or near record snow on January 6–10, 2005, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of Nevada.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 72 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Philip Parr, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Nevada to have been affected adversely by this declared emergency:

The counties of Carson City, Churchill, Clark, Douglas, Elko, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Nye, Pershing, Storey, Washoe, and White Pine for emergency protective measures (Category B) under the Public Assistance program for a period of 72 hours.

(Catalog of Federal Domestic Assistance No. 97.036, Disaster Assistance)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–4186 Filed 3–3–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3202–EM]

Nevada; Emergency and Related Determinations

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

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Nevada (FEMA–3202–EM), dated February 17, 2005, and related determinations.

DATES: *Effective Date:* February 17, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 17, 2005, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the impact in certain areas of the State of Nevada, resulting from the record and/or near record snow on December 29, 2004–January 2, 2005, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of Nevada.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 72 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Philip Parr, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Nevada to have been affected adversely by this declared emergency:

The counties of Carson City, Churchill, Clark, Douglas, Elko, Eureka, Humboldt, Lander, Lincoln, Lyon, Mineral, Nye, Storey, Washoe, and White Pine for emergency protective measures (Category B) under the Public Assistance program for a period of 72 hours.

(Catalog of Federal Domestic Assistance No. 97.036, Disaster Assistance)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–4192 Filed 3–3–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1532–DR]

Northern Mariana Islands; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency

Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of the Northern Mariana Islands (FEMA–1532–DR), dated July 29, 2004, and related determinations.

DATES: *Effective Date:* February 23, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that special conditions are warranted regarding the cost sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). Therefore, consistent with 48 U.S.C. 1469a(d), pertaining to insular areas, and the President's declaration letter dated July 29, 2004, Federal funds for the Public Assistance and Hazard Mitigation Grant Programs are authorized at 90 percent of total eligible costs for the Commonwealth of the Northern Mariana Islands. These cost shares are effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–4181 Filed 3–3–05; 8:45 am]

BILLING CODE 9110–10–U

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1541–DR]

Northern Mariana Islands; Amendment No. 4 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of the Northern Mariana Islands (FEMA–1541–DR), dated August 26, 2004, and related determinations.

DATES: *Effective Date:* February 23, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that special conditions are warranted regarding the cost sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). Therefore, consistent with 48 U.S.C. 1469a(d), pertaining to insular areas, and the President's declaration letter dated August 26, 2004, Federal funds for the Public Assistance and Hazard Mitigation Grant Programs, and for Other Needs Assistance under the Individuals and Households Program are authorized at 90 percent of total eligible costs for the Commonwealth of the Northern Mariana Islands. These cost shares are effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–4182 Filed 3–3–05; 8:45 am]

BILLING CODE 9110–10–U

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3203–EM]

Rhode Island; Emergency and Related Determinations

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

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Rhode Island (FEMA–3203–EM), dated February 17, 2005, and related determinations.

EFFECTIVE DATE: February 17, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated February 17, 2005, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the impact in certain areas of the State of Rhode Island, resulting from the record snow on January 22–23, 2005, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such an emergency exists in the State of Rhode Island.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 72 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency

Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Rhode Island to have been affected adversely by this declared emergency:

The counties of Bristol, Kent, Newport, Providence, and Washington for emergency protective measures (Category B) under the Public Assistance program for a period of 72 hours.

(Catalog of Federal Domestic Assistance No. 97.036, Disaster Assistance)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05–4195 Filed 3–3–05; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2005–20485]

Biometrics Guidance

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice of public meeting and request for comments.

SUMMARY: Recent legislation directs TSA to issue guidance for the use of biometric technology in connection with access control systems in the nation's airports by March 31, 2005. The legislation requires TSA to consult with representatives of industry and the National Institute of Standards and Technology (NIST) in developing the guidance. TSA believes it is important to give all stakeholders and other interested parties an opportunity to learn about the biometric guidance and to comment on the initial draft. Therefore, TSA is scheduling a public meeting to discuss the guidance. The public meeting will be held on March 11, 2005, at 9:30 a.m.

DATES: The public meeting will be on March 11, 2005 in Arlington, VA. The meeting will begin at 9:30 a.m. Persons not able to attend a meeting are invited to provide written comments, which must be received by March 18, 2005.

ADDRESSES: The public meeting will be held at the Transportation Security Administration, 1st Floor Auditorium, 601 South 12th St., Arlington, Virginia 22202. Participants should check in at the Visitor Center and you will be escorted to the meeting.

Persons unable to attend the meeting may submit comments, identified by the TSA docket number to this rulemaking, using any one of the following methods:

Comments Filed Electronically: You may submit comments through the docket Web site at *http://dms.dot.gov*. Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

You also may submit comments through the Federal eRulemaking portal at *http://www.regulations.gov*.

Comments Submitted by Mail, Fax, or In Person: Address or deliver your written, signed comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001; Fax: 202–493–2251.

Comments that include trade secrets, confidential commercial or financial information, or sensitive security information (SSI) should not be submitted to the public regulatory docket.[1] Please submit such comments separately from other comments on the guidance. Comments containing trade secrets, confidential commercial or financial information, or SSI should be appropriately marked as containing such information and submitted by mail to Patrick Kearney, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th St., Arlington, VA 22202.

Reviewing Comments in the Docket: You may review the public docket containing comments in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is located on the plaza level of the NASSIF Building at the Department of Transportation address above. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: Chris Larrick, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202; telephone: (571) 227–3635; email: *Chris.Larrick@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

TSA invites interested persons to participate in the public meeting by submitting written comments, data, or views. We invite comments relating to any aspect of the biometric guidance. The areas in which TSA seeks information and comment from the industry at the public meeting are listed below in the ''Specific Issues for Discussion'' section. See **ADDRESSES** above for information on where to submit comments.

Comments that include trade secrets, confidential commercial or financial information, or SSI should not be submitted to the public regulatory docket. Please submit such comments separately from other comments on the document. Comments containing this type of information should be appropriately marked and submitted to the address specified in the **ADDRESSES** section. Upon receipt of such comments, TSA will not place the comments in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold them in a separate file to which the public does not have access, and place a note in the public docket that TSA has received such materials from the commenter. If TSA receives a request to examine or copy this information, TSA would treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's FOIA regulation found in 6 CFR part 5.

With each comment, please include your name and address, identify the docket number at the beginning of your comments, and give the reason for each comment. The most helpful comments reference a specific portion of the document, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, or by mail as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in two copies, in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you want TSA to acknowledge receipt of your comments, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

[1] See 49 CFR 1520.5 for a description of SSI material.

Except for comments containing confidential information and SSI, we will file in the public docket all comments we receive, as well as a report summarizing each substantive public contact with TSA personnel concerning this rulemaking. The docket is available for public inspection before and after the comment closing date.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late to the extent practicable.

Availability of Draft Biometrics Guidance

You can get an electronic copy using the Internet by—

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*); or

(2) Visiting TSA's Web page at *http://www.tsa.gov/public*.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Background

The terrorist attacks of September 11, 2001, resulted in catastrophic human casualties and property damage. In response to those attacks, Congress passed the Aviation and Transportation Security Act (ATSA), which established the Transportation Security Administration (TSA).[2] TSA was created as an agency within the Department of Transportation (DOT), operating under the direction of the Under Secretary of Transportation for Security. As of March 1, 2003, TSA became an agency of the Department of Homeland Security, and the Under Secretary is now the Assistant Secretary of Homeland Security (Transportation Security Administration). This Assistant Secretary position is now the organizational head of TSA, functioning as the Administrator.

On December 17, 2004, the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–458, was enacted. Section 4011(a)(5) directed TSA to issue guidance on the use of biometric technologies at airports in consultation with representatives of the aviation industry, the biometric identifier industry, and the National Institute of Standards and Technology (NIST). The guidance must include—

- Comprehensive technical and operational system requirements and performance standards;
- A list of products and vendors that meet these requirements and standards;
- Procedures for implementing biometric systems that prevent the use of assumed identities, resolve failure to enroll, false matches, and false non-matches; and
- Best practices for incorporating biometric identifier technology into airport access control systems.

To satisfy these requirements, TSA, in coordination with representatives of the NIST, developed draft guidance and provided the draft to representatives of the biometric identifier industry and the aviation industry on February 16, 2005. In order to give other interested persons the opportunity to review and comment on the draft guidance before it is issued, TSA has decided to hold a public meeting on March 11, 2005.

Specific Issues for Discussion

There are several areas in which TSA seeks information and comment from the industry at the public meeting, which are listed below. These key issues are intended to help focus public comments on subjects that TSA must explore in order to complete the draft guidance. The comments at the meeting need not be limited to these issues, and TSA invites comments on any other aspect of the biometric guidance.

1. Activity in response to Homeland Security Presidential Directive–12 (HSPD–12) is in progress, and Federal Information Processing Standard–201 (FIPS–201) has just been released. TSA requests comments on how these activities should affect the final guidance.

2. The information content of the list of products and vendors that meet the standards in the biometrics guidance (Qualified Products List, or QPL) is subject to further review. Public input will be helpful in the decision making process (see Volume 3, Chapter 1 Management Plan, Section 5.2).

3. To support the test data analysis (at different levels of security), this plan requires the manufacturer to output full precision matching values (similarity scores, hamming distances, etc.). Also, the testing approach calls for multiple attempts to match regardless of the outcome of the first attempt, without the user being aware of the outcome. This may require more detailed understanding of specific device operation to reach a sensible testing operation. (See Biometrics Guidance Volume 3, Chapter 2—Test Plan, Section 1.5 [2])

Participation at the Meeting

The meeting is expected to last from 9:30 to 11 a.m. and to begin with TSA providing a brief overview of the biometrics guidance. Following that, members of the public will be invited to ask clarifying questions or present their views.

Anyone wishing to present an oral statement at the meeting should provide a written request to TSA no later than March 9, 2005. Such requests should be submitted by email to *Chris.Larrick@dhs.gov*, as listed previously in the **FOR FURTHER INFORMATION CONTACT** section. Speakers should keep questions brief and plan to talk for no more than 10 minutes if they are presenting comments on the guidance. TSA will prepare an agenda of speakers that will be available at the meeting. The names of those individuals whose requests to present oral statements are received after the date specified above may not appear on the written agenda. To accommodate as many questions as possible, the amount of time allocated to each speaker may be less than the amount of time requested.

Public Meeting Procedures

TSA will use the following procedures to facilitate the meeting:

(1) There will be no admission fee or other charge to attend or to participate in the meeting. The meeting will be open to all persons who are scheduled to present statements or who register between 8 and 9 on the day of the meeting. TSA will make every effort to accommodate all persons who wish to participate, but admission will be subject to availability of space in the meeting room. The meeting may adjourn early if scheduled speakers complete their statements or questions in less time than is scheduled for the meeting.

(2) An individual, whether speaking in a personal or a representative capacity on behalf of an organization, will be limited to a 10-minute statement and scheduled on a first-come, first-served basis.

(3) Any speaker prevented by time constraints from speaking will be encouraged to submit written remarks, which will be made part of the record.

(4) Representatives of TSA will preside over the meeting.

(5) The meeting will be recorded by a court reporter. Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly.

(6) Statements made by TSA representatives are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the

[2] Pub. L. 107–71, November 19, 2001, 115 Stat. 597.

meeting by a TSA representative is not intended to be, and should not be construed as, a position of TSA.

(7) The meeting is designed to solicit public views and gather additional information. No individual will be subject to cross-examination by any other participant; however, TSA representatives may ask questions to clarify a statement.

Issued in Arlington, Virginia, on February 28, 2005.

Chad Wolf,

Assistant Administrator for Transportation Security Policy.

[FR Doc. 05–4179 Filed 3–3–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–09]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: March 4, 2005.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD published a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: February 24, 2005.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 05–3912 Filed 3–3–05; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4917–N–04]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Commissioner under the provisions of the National Housing Act (the Act). The interest rate for debentures issued under section 221(g)(4) of the Act during the 6-month period beginning January 1, 2005, is 5 percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning January 1, 2005, is 4⅞ percent. However, as a result of a recent amendment to section 224 of the Act, if an insurance claim relating to a mortgage insured under sections 203 or 234 of the Act and endorsed for insurance after January 23, 2004, is paid in cash, the debenture interest rate for purposes of calculating a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

FOR FURTHER INFORMATION CONTACT: L. Richard Keyser, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2232, Washington, DC 20410–8000; telephone 202–755–7500 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (12 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning January 1, 2005, is 4⅞ percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 4⅞ percent for the 6-month period beginning January 1, 2005. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with insurance commitment or endorsement date (as applicable) within the first 6 months of 2005.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.

Effective interest rate	On or after	Prior to
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1. 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	July 1, 1993.
7	July 1, 1993	Jan. 1, 1994.
6⅝	Jan. 1, 1994	July 1, 1994.
7¾	July 1, 1994	Jan. 1, 1995.
8⅜	Jan. 1, 1995	July 1, 1995.
7¼	July 1, 1995	Jan. 1, 1996.
6½	Jan. 1, 1996	July 1, 1996.
7¼	July 1, 1996	Jan. 1, 1997.
6¾	Jan. 1, 1997	July 1, 1997.
7⅛	July 1, 1997	Jan. 1, 1998.
6⅜	Jan. 1, 1998	July 1, 1998.
6⅛	July 1, 1998	Jan. 1, 1999.
5½	Jan. 1, 1999	July 1, 1999.
6⅛	July 1, 1999	Jan. 1, 2000.
6½	Jan. 1, 2000	July 1, 2000.
6½	July 1, 2000	Jan. 1, 2001.
6	Jan. 1, 2001	July 1, 2001.
5⅞	July 1, 2001	Jan. 1, 2002.
5¼	Jan. 1, 2002	July 1, 2002.
5¾	July 1, 2002	Jan. 1, 2003.
5	Jan. 1, 2003	July 1, 2003.
4½	July 1, 2003	Jan. 1, 2004.
5⅛	Jan. 1, 2004	July 1, 2004.
5½	July 1, 2004	Jan. 1, 2005.
4⅞	Jan. 1, 2005	July 1, 2005.

Section 215 of HUD's 2004 Appropriations Act amended section 224 of the Act, to change the debenture interest rate for purposes of calculating certain insurance claim payments made in cash. Therefore, effective immediately, for all claims paid in cash on mortgages insured under section 203 or 234 of the National Housing Act and endorsed for insurance after January 23, 2004, the debenture interest rate will be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years, as found in Federal Reserve Statistical Release H–15. The Federal Housing Administration is in the process of making conforming amendments to applicable regulations to fully implement this recent change to section 224 of the Act.

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the ''going Federal rate'' in effect at the time the debentures are issued. The term ''going Federal rate'' is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the 6-month period beginning January 1, 2005, is 5 percent.

HUD expects to publish its next notice of change in debenture interest rates in July 2005.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

(Authority: Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715*l*, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d))

Dated: February 18, 2005.

Frank L. Davis,

General Deputy Assistant Secretary for Housing.

[FR Doc. E5–901 Filed 3–3–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Department of the 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 (Pub. L. 92–463).

Meeting Date and Time: Friday, March 11, 2005, Time 1:30 p.m. to 4 p.m.

ADDRESSES: Heritage Conservancy, Aldie Mansion, 85 Old Dublin Pike, Doylestown, PA 18901.

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 the Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988 and extended through Pub. L. 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: February 25, 2005.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 05–4243 Filed 3–3–05; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

2005 Migratory Bird Hunting and Conservation Stamp (Federal Duck Stamp) Contest

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service announces the dates and locations of the 2005 Federal Duck Stamp contest; the public is invited to enter and to attend.

DATES: 1. The official date to begin the submission of entries to the 2005 contest is June 1, 2005. All entries must be postmarked no later than midnight, Monday, August 15, 2005.

2. The public may first view the 2005 Federal Duck Stamp Contest entries on Tuesday, September 13 and on Wednesday, September 14, 2005 from 10 a.m. to 2 p.m.

3. Judging will be held on Thursday, September 15 and on Friday, September 16, 2005 beginning at 10 a.m.

4. The contest will be held in Memphis, Tennessee at a location to be announced later.

ADDRESSES: Requests for complete copies of the contest rules, reproduction rights agreement, and display and participation agreement may be requested by calling 1–703–358–2000, or requests may be addressed to: Federal Duck Stamp Contest, U.S. Fish and Wildlife Service, Department of the Interior, 4401 North Fairfax Drive, Mail Stop MBSP–4070, Arlington, VA 22203–1622. You may also download the information from the Federal Duck Stamp Web site at *http://duckstamps.fws.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan W. Booth, Federal Duck Stamp Office, (703) 358–2004, or by e-mail *Ryan_W_Booth@fws.gov*, or fax at (703) 358–2009.

SUPPLEMENTARY INFORMATION:

Background

On March 16, 1934, Congress passed and President Franklin Roosevelt signed the Migratory Bird Hunting Stamp Act. Popularly known as the Duck Stamp Act, it required all waterfowl hunters 16 years or older to buy a stamp annually. The revenue generated was originally earmarked for the Department of Agriculture, but 5 years later was transferred to the Department of the Interior and the U.S. Fish and Wildlife Service to buy or lease waterfowl sanctuaries.

In the years since its enactment, the Federal Duck Stamp Program has become one of the most popular and successful conservation programs ever initiated. Today, some 1.8 million stamps are sold each year, and as of 2004, Federal Duck Stamps have generated more than $700 million for the preservation of more than 5.2 million acres of waterfowl habitat in the United States. Numerous other birds, mammals, fish, reptiles, and amphibians have similarly prospered because of habitat protection made possible by the program. An estimated one-third of the Nation's endangered and threatened species find food or shelter in refuges preserved by Duck Stamp funds. Moreover, the protected wetlands help dissipate storms, purify water supplies, store flood water, and nourish fish hatchlings important for sport and commercial fishermen.

The Contest

The first Federal Duck Stamp was designed at President Franklin Roosevelt's request by Jay N. ''Ding'' Darling, a nationally known political cartoonist for the *Des Moines Register* and a noted hunter and wildlife conservationist. In subsequent years, noted wildlife artists were asked to submit designs. The first content was opened in 1949 to any U.S. artist who wished to enter, and 65 artists submitted a total of 88 design entries in the only art competition of its kind sponsored by the U.S. Government. To select each year's design, a panel of noted art, waterfowl, and philatelic authorities are appointed by the Secretary of the Interior. Winners receive no compensation for the work, except a pane of their stamps, but winners may sell prints of their designs, which are sought by hunters, conservationists, and art collectors.

The public may view the 2005 Federal Duck Stamp entries on Tuesday, September 13 and Wednesday, September 14, 2005, at a time and location to be announced in the future. This year's judging will be held Thursday, September 15 and Friday, September 16, 2005.

Eligible Species

Species eligible for the 2005 contest include brant, northern shoveler, Ross' goose, ruddy duck and Canada goose. Entries featuring a species other than the above listed species will be disqualified.

Dated: February 14, 2005.

Marshall Jones, Jr.,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 05–3841 Filed 3–3–05; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–820–1430–EQ and COC 68264]

Notice of Realty Action, Temporary Access Restriction and Closure of Public Land

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: Public access to the following lands in San Juan County, Colorado, has been temporarily restricted and partially closed to public use under federal regulations at Title 43 Code of Federal Regulations § 8364.1.

FOR FURTHER INFORMATION CONTACT: Charlie Higby, BLM Realty Specialist, (970) 385–1374; San Juan Public Lands Center, 15 Burnett Court, Durango, Colorado 81301.

SUPPLEMENTARY INFORMATION: A portion of federal lands within sections 19, 20, 21, 27, 28, 29, 30, 32, 33, 34, of protracted Township 42 N., R.7 W., New Mexico Principal Meridian, further described as the SOLRC boundary. Access to the BLM public lands south of San Juan County Road # 52, will be restricted to the travel route along San Juan County Road # 52. The public lands accessed by this route are located approximately 1.7 miles south of the intersection of San Juan County Roads # 52 and # 110 in Colorado Basin. This location provides access to the area south of the BLM access point sign south towards Storm Peak only; this is the north face of Storm Peak. With the exception of County Road #52, the public lands north of the BLM access sign (towards Gladstone) are closed to public access. The San Juan County Road # 52 access route is restricted to the roadway at all times until reaching the BLM public land access point.

The seasonal access restriction and closure to the public lands will continue until June 15, 2005.

The following entities are exempt from the access restriction, however, their entry into the closure area must be coordinated with SOLRC to ensure that conditions for access are safe:

- Any Federal, State or local officer, or member of an organized rescue or firefighting force in performance of an official duty;
- Private property owners in the act of accessing their property;
- Other entities authorized under special-use permit by the BLM, including Core Mountain Enterprises, dba as SOLRC.

The access closure is necessary to protect the public health and safety during periods of avalanche and snow data collection work as authorized under BLM permit COC 68264.

Any person who fails to comply with a closure or restricted use order issued under this subpart may be subject to penalties provided for at U.S.C. 3571, including a fine not to exceed $100,000 and/or imprisonment not to exceed 1 year.

This action has been coordinated with the San Juan County Commissioners.

Howard Sargent,

Acting Center Manager, San Juan Public Lands Center.

[FR Doc. 05–4165 Filed 3–3–05; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO640 1020 PF 24 1A]

Call for Nominations for Resource Advisory Councils

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Resource Advisory Council call for nominations.

SUMMARY: The purpose of this notice is to request public nominations for the Bureau of Land Management (BLM) Resource Advisory Councils (RACs) that have member terms expiring this year. The RACs provide advice and recommendations to BLM on land use planning and management of the public lands within their geographic areas. BLM will consider public nominations for 45 days after the publication date of this notice.

DATES: Send all nominations to the appropriate BLM State Office by no later than April 18, 2005.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for the locations to send your nominations.

FOR FURTHER INFORMATION CONTACT: Melanie Wilson Gore, U.S. Department of the Interior, Bureau of Land Management, Intergovernmental Affairs, 1849 C Street, MS–LS–406, Washington, DC 20240; 202–452–0377.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1730) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are consistent with the requirements of Federal Advisory Committee Act (FACA). As required by the FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The rules governing RACs are found at 43 CFR 1784.b. These include three categories:

Category One—Holders of federal grazing permits and representatives of energy and mineral development, timber industry, transportation or rights-of-way, off-highway vehicle use, and commercial recreation;

Category Two—Representatives of nationally or regionally recognized environmental organizations, archaeological and historic interests, dispersed recreation, and wild horse and burro groups;

Category Three—Holders of State, county or local elected office, employees of a State agency responsible for management of natural resources, academicians involved in natural sciences, representatives of Indian tribes, and the public-at-large.

Individuals may nominate themselves or others. Nominees must be residents of the State or States in which the RAC has jurisdiction. BLM will evaluate nominees based on their education, training, and experience and their knowledge of the geographical area of the RAC. Nominees should demonstrate a commitment to collaborative resource decisionmaking. The following must accompany all nominations:

—Letters of reference from represented interests or organizations,

—A completed background information nomination form,

—Any other information that speaks to the nominee's qualifications.

Simultaneous with this notice, BLM State Offices will issue press releases providing additional information for submitting nominations, with specifics about the number and categories of member positions available for each RAC in the State. Nominations for RACs should be sent to the appropriate BLM offices listed below.

Alaska

Alaska RAC

Danielle Allen, Alaska State Office, BLM, 222 West 7th Avenue, #13, Anchorage, Alaska 99513, (907) 271–3335.

Arizona

Arizona RAC

Deborah Stevens, Arizona State Office, BLM, 222 N. Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

California

Central California RAC

Deane Swickard, Folsom Field Office, BLM, 63 Natoma Street, Folsom, California 95630, (916) 985–4474.

Northeastern California RAC

Jeff Fontana, Eagle Lake Field Office, BLM, 2950 Riverside Drive, Susanville, California 96130, (530) 257–0456.

Northwestern California RAC

Jeff Fontana, Eagle Lake Field Office, BLM, 2950 Riverside Drive, Susanville, California 96130, (530) 257–0456.

Colorado

Front Range RAC

Ken Smith, Canon City Field Office, BLM, 3170 E. Main Street, Canon City, Colorado 81212, (719) 269–8553.

Northwest RAC

Melodie Lloyd, Western Slope Center, BLM, 2815 H Road, Grand Junction, Colorado 81506, (970) 244–3097.

Southwest RAC

Melodie Lloyd, Western Slope Center, BLM, 2815 H Road, Grand Junction, Colorado 81506, (970) 244–3097.

Idaho

Coeur d'Alene District RAC

Stephanie Snook, Coeur d'Alene District Office, BLM 1808 North Third Street, Coeur d'Alene, Idaho 83814–3407, (208) 769–5004.

Idaho Falls District RAC

David Howell, Idaho Falls District Office, BLM 1405 Hollipark Drive, Idaho Falls, Idaho 83401, (208) 524–7559.

Boise District RAC

MJ Byrne, Boise District Office, BLM, 3948 Development Avenue, Boise, Idaho 83705, (208) 384–3393.

Twin Falls District RAC

Sky Buffat, Twin Falls District Office, BLM, 378 Falls Avenue, Twin Falls, Idaho 83301, (208) 732–7307.

Montana and Dakotas

Eastern Montana RAC

Mary Apple, Montana State Office, BLM, 5001 Southgate Drive, Billings, Montana 59107–6800, (406) 896–5258.

Central Montana RAC

Kaylene Patten, Lewistown Field Office, BLM, Airport Road, P.O. Box 1160, Lewistown, Montana 59457, (406) 538–1957.

Western Montana RAC

Marilyn Krause, Butte Field Office, BLM, 106 North Parkmont, Butte, Montana 59701–3388, (406) 533–7617.

Dakotas RAC

Mary Ramsey, North Dakota Field Office, BLM, 2933 Third Avenue West, Dickinson, North Dakota 58601–2619, (701) 227–7700.

Nevada

Mojave-Southern RAC; Northeastern Great Basin RAC; Sierra Front Northwestern RAC

Debra Kolkman, Nevada State Office, BLM, 1340 Financial Boulevard, Reno, Nevada 89502–7147, (775) 289–1946.

New Mexico

New Mexico RAC

Theresa Herrera, New Mexico State Office, BLM, 1474 Rodeo Road, Santa Fe, New Mexico 87505, (505) 438–7517.

Oregon/Washington

Eastern Washington RAC; John Day/Snake RAC; Southeast Oregon RAC

Pam Robbins, Oregon State Office, BLM, 333 SW First Avenue, P.O. Box 2965, Portland, OR 97208–2965, (503) 808–6306.

Utah

Utah RAC

Sherry Foot, Utah State Office, BLM, 324 South State Street, Suite 301, P.O. Box 45155, Salt Lake City, Utah 84145–0155, (801) 539–4195.

Dated: February 22, 2005.

Kathleen Clarke,

Director, Bureau of Land Management.

[FR Doc. 05–4260 Filed 3–3–05; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF JUSTICE

Office of the Deputy Attorney General; Guidance on the Application of the Law Enforcement Officers Safety Act of 2004 to Current and Retired Department of Justice Law Enforcement Officers

AGENCY: Department of Justice.

ACTION: Notice of Attorney General guidance.

SUMMARY: On January 31, 2005, the Attorney General issued a memorandum to the Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives; the Administrator, Drug Enforcement Administration; the Director, Federal Bureau of Investigation; the Director, Federal Bureau of Prisons; the Inspector General; and the Director, United States Marshals Service providing guidance on the application of the Law Enforcement Officers Safety Act of 2004, Pub. L. No. 108–277, to current and retired Department of Justice law enforcement officers. This notice contains the guidance issued by the Attorney General.

DATES: The guidance was issued on January 31, 2005.

FOR FURTHER INFORMATION CONTACT: Richard Hertling, Office of Legal Policy, Department of Justice, Room 4226, 950 Pennsylvania Avenue, NW., Washington, DC 20530, telephone (202) 514–4601. You may view an electronic version of the guidance at *http://www.usdoj.gov/olp/agmemo01312005.pdf.*

SUPPLEMENTARY INFORMATION: On July 22, 2004, the President signed the Law Enforcement Officers Safety Act of 2004 (hereinafter, the ''Act''), Pub. L. 108–277, 118 Stat. 865 (2004), codified at 18 U.S.C. 926B and 926C. With certain limitations and conditions, the Act exempts qualified active and retired law enforcement officers from state laws and local ordinances prohibiting the carrying of concealed weapons. On January 31, 2005, the Department of Justice issued guidance on the application of the Act for its current and retired law enforcement officers. Because other federal agencies and state and local law enforcement agencies may be interested in reviewing the Department's guidance before issuing their own, the guidance issued by the Attorney General is contained in this notice.

Dated: February 18, 2005.

James B. Comey,

Deputy Attorney General.

Memorandum for the Director, Bureau of Alcohol, Tobacco, Firearms, and Explosives
The Administrator, Drug Enforcement Administration
The Director, Federal Bureau of Investigation
The Director, Federal Bureau of Prisons
The Inspector General
The Director, United States Marshals Service

From: The Attorney General.

Subject: Guidance on the application of the Law Enforcement Officers Safety Act of 2004 to current and retired Department of Justice law enforcement officers.

On July 22, 2004, Congress passed and the President signed the Law Enforcement Officers Safety Act of 2004 (the ''Act''), Pub. L. 108–277, 118 Stat. 865 (2004), codified at 18 U.S.C. 926B and 926C. With certain limitations and conditions, the Act exempts active and retired ''qualified law enforcement officers'' (''qualified LEOs'') from state laws and local ordinances prohibiting the carrying of concealed weapons. The Act does not purport to affect any state or local laws and ordinances that permit restrictions of concealed firearms on private property or any such laws that restrict the possession of firearms on any State or local government property, installation, building, base, or park.

This memorandum outlines the Act's application to current and retired Department of Justice LEOs. The Department recognizes that individuals who meet the definition of a qualified LEO under the Act may or may not meet the definition of an LEO under the Civil Service Retirement System or the Federal Employee Retirement System. The guidance set forth below is not intended to and does not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States, its departments, agencies, or other entities, its officers or employees, or any other person. Nothing in the Act or this memorandum impairs or otherwise affects the right of an individual to keep and bear arms under the Second Amendment to the Constitution of the United States.

I. The Act's Application to Current Department Law Enforcement Officers

With respect to current law enforcement officers, the Act provides as follows:

''(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b)

(b) This section shall not be construed to supersede or limit the laws of any State that—

(1) permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

(2) prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

(c) As used in this section, the term ''qualified law enforcement officer'' means an employee of a governmental agency who—

(1) Is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest;

(2) Is authorized by the agency to carry a firearm;

(3) Is not the subject of any disciplinary action by the agency;

(4) Meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;

(5) Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(6) Is not prohibited by Federal law from receiving a firearm.

(d) The identification required by this subsection is the photographic identification issued by the governmental agency for which the individual is employed as a law enforcement officer.''

118 Stat. at 865–66.

As these provisions make clear, an active qualified LEO under the Act is a current government agency employee who (1) is authorized to perform the specified law enforcement functions *and* holds a position for which powers of arrest are granted by statute; (2) is authorized to carry a firearm by the agency for which he or she works; (3) is not the subject of disciplinary action; (4) meets any standards set by the employing agency that require the employee to regularly qualify in the use of a firearm; (5) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; (6) is not prohibited by Federal law from receiving a firearm; and (7) carries a photo identification issued by the agency. For purposes of the last factor, the Department considers a current, valid ''U.S. Government Employee'' photographic identification card or a Department-issued credential to constitute ''the photographic identification issued by the governmental agency for which the individual is employed as a law enforcement officer.'' Should any questions arise concerning the application of these qualification provisions, the determination made by the head of the relevant Department component or his designee shall be subject to review by the Deputy Attorney General.

The Act has no effect on the requirement of any Department law enforcement components that agents or officers carry a firearm at all times. Similarly, any component's regulations or procedures with respect to on-duty agents or officers will continue to be in effect. Those requirements, regulations, and procedures separately remain in effect, notwithstanding any provision of the Act.

It is important to note that the Act does not supersede existing agency regulations or policies limiting, restricting, conditioning, or otherwise affecting the carrying of concealed firearms. The Act does preempt and supersede inconsistent state laws and local ordinances, whether criminal or civil. It does not prohibit any component from taking any appropriate disciplinary action for any violation of its existing regulations or policies.

The Department considers the following components to be agencies whose current employees may qualify as LEOs for purposes of the Act: the Bureau of Alcohol, Tobacco, Firearms, and Explosives; the Drug Enforcement Administration; the Federal Bureau of Investigation; the Federal Bureau of Prisons; the Office of the Inspector General; and the United States Marshals Service. Of course, any particular employee of one of these components independently must meet each of the specified statutory qualifications to qualify as an LEO under the Act.

II. The Act's Application to Retired Department Law Enforcement Officers

With respect to retired law enforcement officers, the Act provides as follows:

''(a) Notwithstanding any other provision of the law of any State or any political subdivision thereof, an individual who is a qualified retired law enforcement officer and who is carrying the identification required by subsection (d) may carry a concealed firearm that has been shipped or transported in

interstate or foreign commerce, subject to subsection (b).

(b) This section shall not be construed to supersede or limit the laws of any State that—

(1) Permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

(2) Prohibit or restrict the possession of firearms on any State or local government property, installation, building, base, or park.

(c) As used in this section, the term ''qualified retired law enforcement officer'' means an individual who—

(1) Retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;

(2) Before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;

(3)(A) Before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more; or

(B) Retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

(4) Has a nonforfeitable right to benefits under the retirement plan of the agency;

(5) During the most recent 12-month period, has met, at the expense of the individual, the State's standards for training and qualification for active law enforcement officers to carry firearms;

(6) Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(7) Is not prohibited by Federal law from receiving a firearm.

(d) The identification required by this subsection is—

(1) A photographic identification issued by the agency from which the individual retired from service as a law enforcement officer that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the standards established by the agency for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm; or

(2)(A) A photographic identification issued by the agency from which the individual retired from service as a law enforcement officer; and

(B) Certification issued by the State in which the individual resides that indicates that the individual has, not less recently than one year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the State to meet the standards established by the State for training and qualification for active law enforcement officers to carry a firearm of the same type as the concealed firearm.

(e) As used in this section, the term 'firearm' does not include—

(1) Any machinegun (as defined in section 5845 of the National Firearms Act);

(2) Any firearm silencer (as defined in section 921 of this title); and

(3) A destructive device (as defined in section 921 of this title).''

118 Stat. at 866–67.

Under these provisions, a person is a retired qualified LEO under the Act if he or she (1) retired in good standing from his or her employing agency (other than for reasons of mental instability); (2) was authorized to perform the specified law enforcement functions and held a position for which powers of arrest were granted by statute; (3) was regularly employed as a law enforcement officer for an aggregate of 15 years or more before his or her retirement, or retired from service with his or her agency (after completing any applicable probationary period of such service) due to a service-connected disability as determined by the agency; (4) has a non-forfeitable right to retirement plan benefits of the law enforcement agency; (5) during the most recent year, has met state firearms training and qualifications that are the same as the training and qualifications for active duty officers; (6) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; (7) is not prohibited by Federal law from receiving a firearm; (8) carries a photo identification issued by the agency; and (9) meets an annual qualification requirement.

The Department considers the following components to be agencies whose retired employees may qualify as LEOs for purposes of the Act: the Bureau of Alcohol, Tobacco, Firearms, and Explosives; the Drug Enforcement Administration; the Federal Bureau of Investigation; the Federal Bureau of Prisons; the Office of Inspector General, insofar as the retiree exercised statutory law enforcement authority at the time of his retirement; and the United States Marshals Service. As with current employees, any particular retired employee of one of these components independently must meet each of the specified statutory qualifications to qualify as a retired LEO under the Act.

Each affected component separately shall prepare and issue a photographic identification card for qualified retired LEOs. Each such identification card shall, at a minimum, include the name of the individual, the individual's photograph, an identification number traceable to the bearer, the date the employee retired in good standing from service with the issuing agency, and the phrase ''Retired Law Enforcement Officer.''

Individual components shall not themselves train or qualify retired employees to carry a firearm, as authorized under the law. In order to be authorized under the Act to carry a firearm, a retired qualified LEO from a DOJ component must qualify pursuant to 18 U.S.C. 926C(d)(2)(B), and in accordance with state standards for active LEOs.

It shall be within the discretion of the employing agency to issue the retired LEO credential called for under the Act. Should the agency (1) make a finding that the subject is not qualified, or (2) enter into an agreement in which the subject agrees that he or she is not qualified, the subject shall not be issued the retired LEO credential described above.

With respect to the Act's limitation that a qualified retired LEO ''is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance,'' each former Department employee seeking such qualification annually must meet state standards, if any, regarding alcohol or drug use by law enforcement officers authorized to carry a firearm.

[FR Doc. 05–4282 Filed 3–3–05; 8:45 am]

BILLING CODE 4410–20–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Registration

By Notice dated October 1, 2004, and published in the **Federal Register** on October 29, 2004, (69 FR 63178), Cambrex North Brunswick Inc., Technology Center of New Jersey, 661 Highway One, North Brunswick, New Jersey 08902, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedules I and II:

Drug	Schedule
N-Ethylamphetamine (1475)	I
Tetrahydrocannabinols (7370)	I

Drug	Schedule
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
4-Methoxyamphetamine (7411)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Codeine (9050)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Methadone Intermediate (9254)	II
Morphine (9300)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cambrex North Brunswick, Inc., Technology Centre of New Jersey to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Cambrex North Brunswick, Inc., Technology Centre of New Jersey to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: February 23, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–4212 Filed 3–3–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated September 28, 2004 and published in the **Federal Register** on October 14, 2004, (69 FR 61043), Cambrex North Brunswick, Inc., Technology Center of New Jersey, 661 Highway One, North Brunswick, New Jersey 08902, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The company plans to import the listed controlled substances to manufacture amphetamine.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. sections 823(a) and 952(a) and determined that the registration of Cambrex North Brunswick, Inc. to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Cambrex North Brunswick, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. sections 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: February 23, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–4235 Filed 3–3–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated September 16, 2004, and published in the **Federal Register** on September 30, 2004, (69 FR 58539–58540), Cambridge Isotope Laboratory, 50 Frontage Road, Andover, Massachusetts 01810, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedules I and II:

Drug	Schedule
Methaqualone (2565)	I
Dimethyltryptamine (7435)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Dextropropoxyphene (9273)	II
Morphine (9300)	II
Fentanyl (9801)	II

The company plans to manufacture small quantities of the listed controlled substances to produce isotope labeled standards for drug analysis.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cambridge Isotope Laboratory to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Cambridge Isotope Laboratory to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: February 22, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–4204 Filed 3–3–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated September 28, 2004, and published in the **Federal Register** on October 14, 2004, (69 FR 61043), Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78664, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed in Schedules I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
4-7Methylaminorex (cis isomer) (1590).	I
Gamma hydroxybutyric acid (2010).	I
Methaqualone (2565)	I
Alpha-Ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390).	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
3,4-Methylenedioxyamphetamine (7400).	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401).	I
N-Hydroxy-3,4-methylendioxyamphetamine (7402).	I
3,4-Methylendioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Acetyldihydrocodeine (9051)	I
Benzylmorphine (9052)	I
Codeine-N-oxide (9053)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Hydromorphinol (9301)	I
Methyldihydromorphine (9304)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
Pholcodine (9314)	I
Acetylmethadol (9601)	I
Allylprodine (9602)	I
Alphacetylmethadol except levo-alphacetylmethadol (9603).	I
Alphameprodine (9604)	I
Alphamethadol (9605)	I
Betacetylmethadol (9607)	I
Betameprodine (9608)	I
Betamethadol (9609)	I
Betaprodine (9611)	I
Hydroxypethidine (9627)	I
Noracymethadol (9633)	I
Norlevorphanol (9634)	I
Normethadone (9635)	I
Trimeperidine (9646)	I
Phenomorphan (9647)	I
Para-Fluorofentanyl (9812)	I
3–Methylfentanyl (9813)	I
Alpha-Methylfentanyl (9814)	I
Acetyl-alpha-methylfentanyl (9815).	I
Beta-hydroxyfentanyl (9830)	I
Beta-hydroxy-3-methylfentanyl (9831).	I
Alpha-Methylthiofentanyl (9832)	I
3–Methylthiofentanyl (9833)	I
Thiofentanyl (9835)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenmetrazine (1631)	II
Methylphenidate (1724)	II
Ambobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Nabilone (7379) II 1–Phenylcyclohexylamine (7460).	II
Phencyclidine (7471)	II
1–Piperidinocyclohexanecarbonitrile (8603).	II
Alphaprodine (9010)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Racemethorphan (9732)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture small quantities of the listed controlled substances to make reference standards for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cerilliant Corporation to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Cerilliant Corporation to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: Febuary 22, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–4205 Filed 3–3–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated September 28, 2004 and published in the **Federal Register** on October 14, 2004, (69 FR 61044), Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78664, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in Schedules I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
Gamma hydroxybutyric acid (2010).	I
Ibogaine (7260)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxymethamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Etorphine (9056)	I
Heroin (9200)	I
Pholcodine (9314)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II

Drug	Schedule
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II

The company plans to import small quantities of the listed controlled substances for the manufacture of analytical reference standards.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. sections 823(a) and 952(a) and determined that the registration of Cerilliant Corporation to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Cerilliant Corporation to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. sections 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: February 22, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–4234 Filed 3–3–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated September 28, 2004, and published in the **Federal Register** on October 13, 2004, (69 FR 60898), Chattem Chemicals, Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedules I and II:

Drug	Schedule
N-Ethylamphetamine (1475)	I
4-Methoxyamphetamine (7411)	I
2,5-Dimethoxyamphetamine (7396).	I
Difenoxin (9168)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Codeine (9050)	II
Oxycodone (9143)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Dextropropoxyphene, bulk (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Chattem Chemicals, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Chattem Chemicals, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: February 23, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–4230 Filed 3–3–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated November 8, 2004, and published in the **Federal Register** on November 22, 2004, (69 FR 67962–67963), ISP, Freetown Fine Chemicals, Inc., 238 South Main Street, Assonet, Massachusetts 02702, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed in Schedules I and II:

Drug	Schedule
2,5-Dimethoxyamphetamine (7396).	I
Amphetamine (1100)	II
Phenylacetone (8501)	II

The company plans to manufacture phenylacetone to be used in the manufacture of the amphetamine. The bulk 2, 5-dimethoxyamphetamine will be used for conversion into non-controlled substances.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of ISP, Freetown Fine Chemicals, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated ISP, Freetown Fine Chemicals, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: February 22, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–4197 Filed 3–3–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated November 1, 2004, and published in the **Federal Register** on November 10, 2004, (69 FR 65229), Guilford Pharmaceuticals, Inc., 6611 Tributary Street, Baltimore, Maryland 21224, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk

manufacturer of Cocaine (9041), a basic class of controlled substance listed in Schedule II.

The company plans to manufacture a cocaine derivative to be used as an intermediate for the production of Dopascan Injection. Cocaine derivatives are a Schedule II controlled substance in the cocaine basic class.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Guilford Pharmaceuticals, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Guilford Pharmaceuticals, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: February 22, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–4198 Filed 3–3–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 11, 2004, JFC Technologies, LLC, 100 West Main Street, Bound Brook, New Jersey 08805, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic class of controlled substances listed in Schedule II:

Drug	Schedule
Diphenozylate (9170)	II
Hydrocodone (9193)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than May 3, 2005.

Dated: February 23, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–4227 Filed 3–3–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated November 22, 2004 and published in the **Federal Register** on December 6, 2004, (69 FR 70470), Johnson Matthey, Inc., Pharmaceutical Materials, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic class of controlled substances listed in Schedule II.

Drug	Schedule
Phenylacetone (8501)	II
Raw Opium (9600)	II
Concentrate of Poppy Straw (9670).	II

The company plans to import the listed controlled substances as raw materials for use in the manufacture of bulk controlled substances for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Johnson Matthey Inc. to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Johnson Matthey Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: February 22, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–4202 Filed 3–3–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated September 16, 2004, and published in the **Federal Register** on September 30, 2004, (69 FR 58542–58533), Lifepoint, Inc., 10400 Trademark Street, Rancho Cucamonga, California 91730, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedules I and II:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phencyclidine (7471)	II
Benzoylecgonine (9180)	II
Morphine (9300)	II

The company plans to produce small quantities of controlled substances for use in drug test kits.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Lifepoint, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Lifepoint, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and

local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: February 22, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–4203 Filed 3–3–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Application

Pursuant to 21 CFR 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 9, 2004, Lin Zhi International Inc., 687 North Pastoria Avenue, Sunnyvale, California 94085, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed in Schedule II.

Drug	Schedule
Oxycodone (9143)	II
Hydrocodone (9193)	II

The company plans to manufacture the listed controlled substances in bulk for use in analysis and drug test standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a)

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than May 3, 2005.

Dated: February 23, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–4222 Filed 3–3–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(1), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a)(2)(b) authorizing the importation of such substances, provide manufacturers holding registrations for the bulk manufacture of the substances an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on December 9, 2004, Lipomed Inc., One Broadway, Cambridge, Massachusetts 02142, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the basic classes of controlled substances:

Drug	Schedule
Cathinone (1235)	I
Methaqualone (2565)	I
Gamma-Hydroxybutyric Acid (2010).	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390).	I
4-Bromo-2–5-dimethoxyamphetamine (7391).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
2,5-Dimethoxy-4-ethylamphetamine (7399).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Acetyldihydrocodeine (9051)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Tilidine (9750)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Methadone (9250)	II
Dextropropoxphene (9273)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Fentanyl (9801)	II

The company plans to import small reference standard quantities of finished commercial product from its sister company in Switzerland for distribution to its customers for drug testing and pharmaceutical research and development.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file written comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than April 4, 2005.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–43746), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: February 23, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–4200 Filed 3–3–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated October 18, 2004, and published in the **Federal Register** on October 25, 2004, (69 FR 62295), National Center for Development of Natural Products, The University of Mississippi, 135 Coy Waller Lab Complex, University, Mississippi 38677, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedule I:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I

The company plans to manufacture the controlled substances in bulk for product development.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of National Center for Development of Natural Products to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated National Center for Development of Natural Products to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: February 22, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–4231 Filed 3–3–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated October 18, 2004, and published in the **Federal Register** on October 25, 2004, (69 FR 62295), National Center for Natural Products Research— NIDA MProject, University of Mississippi, 135 Coy Waller Lab Complex, University, Mississippi 38677, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedule I:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I

The company plans to cultivate marihuana for the National Institute of Drug Abuse for research approved by the Department of Health and Human Services.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of National Center for Natural Products Research—NIDA MProject, University of Mississippi to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated National Center for Natural Products Research—NIDA MProject, University of Mississippi to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: February 22, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–4232 Filed 3–3–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(1), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a)(2)(b) authorizing the importation of such substances, provide manufacturers holding registrations for the bulk manufacture of the substances an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on October 4, 2004, Noramco Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the basic class of controlled substances listed in Schedule II:

Drug	Schedule
Raw Opium (9600)	II
Concentrate of Poppy Straw (9670).	II

The company plans to import the listed controlled substances to manufacture other controlled substances.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file written comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway,

Alexandria, Virginia 22301; and must be filed no later than (30 days from publication).

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975 (40 FR 43745–46), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: February 22, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–4201 Filed 3–3–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated September 16, 2004, and published in the **Federal Register** on September 30, 2004, (69 FR 58544), Noramco, Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedules I and II:

Drug	Schedule
Codeine-N-Oxide (9053)	I
Morphine-N-Oxide (9307)	I
Amphetamine (1100)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture small quantities of the Schedule I controlled substances for internal testing; the Schedule II controlled substances will be manufactured in bulk for distribution to its customer.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Noramco Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Noramco Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: February 22, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–4233 Filed 3–3–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to 21 CFR 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 5, 2005, Novus Fine Chemicals LLC, 611 Broad Street, Carlstadt, New Jersey 07072–1417, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The company plans to manufacture the listed controlled substance in bulk for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than May 3, 2005.

Dated: February 23, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–4206 Filed 3–3–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated November 8, 2004, and published in the **Federal Register** on November 22, 2004, (69 FR 67963), Orasure Technologies, Inc., Lehigh University, Seeley G. Mudd—Building 6, Bethlehem, Pennsylvania 18015, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below in Schedules I and II:

Drug	Schedule
Alphamethadol (9605)	I
Benzoylecgonine (9180)	II
Morphine (9300)	II

The company plans to manufacture the listed controlled substances in bulk to manufacture other controlled substances.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Orasure Technologies, Inc., to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Orasure Technologies, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: February 22, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–4229 Filed 3–3–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on November 9, 2004, Siegfried (USA), Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic class of controlled substances listed in Schedule II:

Drug	Schedule
Amphetamine (1100)	II
Methylphenidate (1724)	II
Ambobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Codeine (9050)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Methadone Intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage form) (9273).	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than May 3, 2005.

Dated: February 23, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–4228 Filed 3–3–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to 21 CFR 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 21, 2004, Sigma Aldrich Research Biochemicals, Inc., 1–3 Strathmore Road, Natick, Massachusetts 01760, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed in Schedules I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
Alpha-ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
4-Bromo-2,5-dimethoxy-amphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (MDMA) (7405).	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (TCP) (7470).	I
Heroin (9200)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Ecgonine (9180)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Metazocine (9240)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Carfentanil (9743)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for laboratory reference standards.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than May 3, 2005.

Dated: February 23, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–4226 Filed 3–3–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

February 24, 2005.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• 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;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are 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.

Agency: Employee Benefits Security Administration.

Type of Review: Extension of currently approved collection.

Title: Suspension of Pension Benefits Regulation Pursuant to 29 CFR 2530.203–3.

OMB Number: 1210–0048.

Frequency: On occasion.

Type of Response: Third party disclosure.

Affected Public: Business or other for-profit; Not-for-profit institutions; and Individuals or households.

Number of Respondents: 49,900.

Number of Annual Responses: 128,054.

Estimated Time per Response: 20 minutes.

Total Burden Hours: 23,146.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $51,222.

Description: Section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA) governs the circumstances under which pension plans may suspend pension benefit payments to retirees that return to work or to participants that continue to work beyond normal retirement age. Furthermore, section 203(a)(3)(B) of ERISA authorizes the Secretary to prescribe regulations necessary to carry out the provisions of this section.

In this regard, 29 CFR 2530.203–3 describes the circumstances and conditions under which plans may suspend the pension benefits of retirees that return to work, or of participants that continue to work beyond normal retirement age. In order for a plan to suspend benefits pursuant to the regulation, it must notify affected retirees or participants (by first class mail or personal delivery) during the first calendar month or payroll period in which the plan withholds payment, that benefits are suspended. This notice must include the specific reasons for such suspension, a general description of the plan provisions authorizing the suspension, a copy of the relevant plan provisions, and a statement indicating where the applicable regulations may be found, (*i.e.*, 29 CFR 2530.203–3). In addition, the suspension notification must inform the retiree or participant of the plan's procedure for affording a review of the suspension of benefits.

Agency: Employee Benefits Security Administration.

Type of Review: Extension of currently approved collection.

Title: Class Exemption 77–4 for Certain Transactions between Investment Companies and Employee Benefit Plans.

OMB Number: 1210–0049.

Frequency: On occasion.

Type of Response: Third party disclosure.

Affected Public: Business or other for-profit; Not-for-profit institutions; and Individuals or households.

Number of Respondents: 900.

Number of Annual Responses: 128,000.

Estimated Time per Response: 35 minutes.

Total Burden Hours: 11,117.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $48,640.

Description: Without the relief provided by this exemption, an open-end mutual fund would be unable to sell shares to or purchase shares from a plan when the fiduciary with respect to the plan is also the investment advisor for the mutual fund. As a result, plans would be compelled to liquidate their existing investments involving such transactions and to amend their plan documents to establish new investment structures and policies.

In order to insure that the exemption is not abused and that the rights of participants and beneficiaries are protected, the Department has included in the exemption three basic disclosure requirements. The first requires at the time of the purchase or sale of such mutual fund shares that the plan's independent fiduciary receive a copy of the current prospectus issued by the open-end mutual fund and a full and detailed written statement of the investment advisory fees charges to or paid by the plan and the open-end mutual fund to the investment advisor. The second requires that the independent fiduciary approve in writing such purchases and sales. The third requires that the independent fiduciary, once notified of changes in the fees, re-approve in writing the purchase and sale of mutual fund shares.

Agency: Employee Benefits Security Administration.

Type of Review: Extension of currently approved collection.

Title: Prohibited Transaction Class Exemption T88–1.

OMB Number: 1210–0074.

Frequency: On occasion.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit; Not-for-profit institutions; and Individuals or households.

Number of Respondents: 1.

Number of Annual Responses: 1.

Estimated Time per Response: N/A.

Total Burden Hours: 1.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Prohibited Transaction Exemption T88–1 adopts, for purposes of the prohibited transaction provisions of section 8477(c)(2) of the Federal Employees' Retirement System Act of 1986, certain prohibited transaction class exemptions granted pursuant to section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA). The information collection requirements incorporated within this class exemption are intended to protect the interests of plan participants and beneficiaries and provide the Department with sufficient information to support a finding that the exemption meets the statutory standards of section 408(a) of ERISA. The burden for the information collection requirements associated with this exemption is already accounted for under other ERISA requirements.

Agency: Employee Benefits Security Administration.

Type of Review: Extension of currently approved collection.

Title: Delinquent Filer Voluntary Compliance Program.

OMB Number: 1210–0089.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Business or other for-profit; Not-for-profit institutions; and Individuals or households.

Number of Respondents: 4,105.

Number of Annual Responses: 4,105.

Estimated Time per Response: 30 minutes.

Total Burden Hours: 205.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $132,181.

Description: Plan administrators who fail to file an annual report may be assessed a penalty of $300 per day, up to $30,000 per year, until a complete annual report is filed. Penalties are applicable to each annual report required to be filed under Title I of the Employee Retirement Income Security Act of 1974 (ERISA).

The Department may, in its discretion, waive all or part of a civil penalty assessed under ERISA section 502(c)(2) upon a showing by the administrator that there was reasonable cause for the failure to file a complete and timely annual report.

The Department has determined that the possible assessment of these civil penalties may deter certain delinquent filers from voluntarily complying with the annual reporting requirements under Title I of ERISA. In an effort to encourage annual reporting compliance, the Department implemented the Delinquent Filer Voluntary Compliance Program (the Program) on April 27, 1995 (60 FR 20873). Under the Program, administrators otherwise subject to the assessment of higher civil penalties are permitted to pay reduced civil penalties for voluntarily complying with the annual reporting requirements under Title I of ERISA.

This ICR covers the requirement of providing data necessary to identify the plan along with the penalty payment. This data is the means by which each penalty payment is associated with the appropriate plan.

Agency: Employee Benefits Security Administration.

Type of Review: Extension of currently approved collection.

Title: PTE 98–54 Relating to Certain Employee Benefit Plan Foreign Exchange Transactions Executed Pursuant to Standing Instructions.

OMB Number: 1210–0111.

Frequency: On occasion.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit; Not-for-profit institutions; and Individuals or households.

Number of Respondents: 35.

Number of Annual Responses: 8,400.

Estimated Time per Response: 30 minutes.

Total Burden Hours: 4,200.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: PTE 98–54 permits certain foreign exchange transactions between employee benefit plans and certain banks, broker-dealers, and domestic affiliates thereof, which are parties in interest with respect to such plans, pursuant to standing instructions. In the absence of an exemption, foreign exchange transactions pursuant to standing instructions would be prohibited under circumstances where the bank or broker-dealer is a party in interest or disqualified person with respect to the plan under the Employee Retirement Income Securities Act of 1974 (ERISA) or the Internal Revenue Code.

The class exemption has five basic information collection requirements. The first requires the bank or broker-dealer to maintain written policies and procedures for handling foreign exchange transactions for plans for which it is a party in interest which ensure that the party acting for the bank or broker-dealer knows it is dealing with a plan. The second requires that the transactions are performed in accordance with a written authorization executed in advance by an independent fiduciary of the plan. The third requires that the bank or broker-dealer provides the authorizing fiduciary with a copy of its written policies and procedures for foreign exchange transactions involving income item conversions and de minimis purchase and sale transactions prior to the execution of a transaction. The fourth requires the bank or broker-dealer to furnish the authorizing fiduciary a written confirmation statement with respect to each covered transaction within five days of execution. The fifth requires that the bank or broker-dealer maintains records necessary for plan fiduciaries, participants, and the Department and Internal Revenue Service to determine whether the conditions of the exemption are being met for period of six years from the date of execution of a transaction.

By requiring that records pertaining to the exempted transaction be maintained for six years, this ICR insures that the exemption is not abused, the rights of the participants and beneficiaries are protected, and that compliance with the exemption's conditions can be confirmed. The exemption affects participants and beneficiaries of the plans that are involved in such transactions as well as certain banks, broker-dealers, and domestic affiliates thereof.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–4209 Filed 3–3–05; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

February 28, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on (202) 693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- 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;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are 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.

Agency: Office of the Solicitor.

Type of Review: Extension of currently approved collection.

Title: Equal Access to Justice Act.

OMB Number: 1225–0013.

Frequency: On occasion.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals or households; State, local, or tribal government; and Federal government.

Number of Respondents: 10.

Estimated Annual Responses: 10.

Average Response Time: 5 hours.

Total Annual Burden Hours: 50.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $20.00.

Description: The Equal Access to Justice Act (EAJA) provides for the award of fees and expenses, under certain circumstances, to parties involved in adversary adjudications with the United States. 5 U.S.C. 504. The statute, at 5 U.S.C. 504(a)(2), requires that a party seeking an award of fees and expenses in a covered proceeding must submit to the agency ''an application which shows that the party is the prevailing party and is eligible to receive an award'' under EAJA.

The Department of Labor's regulations at 29 CFR part 16 implement EAJA, and 29 CFR 16.201 sets forth the required elements of an EAJA award application. Under this regulation, EAJA award applications must include information regarding the following: The identity of the applicant, the proceeding for which an award is sought, the fact that the applicant has prevailed, the agency position alleged not to be substantially justified, the number of employees of the applicant at the time the proceeding was instituted (if the applicant is other than an individual), the type and purpose of the applicant's organization or business (if applicable), net worth and/or other designated information, and amounts requested. Certain certifications, affidavits and other documents also are required. *See* 29 CFR 16.201–16.204 for a complete description of information required from applicants.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–4210 Filed 3–3–05; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

February 25, 2005.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on (202) 693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- 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;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are 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.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Underground Construction Standard (29 CFR 1926.800).

OMB Number: 1218–0067.

Frequency: On occasion and annually.

Type of Response: Recordkeeping and third party disclosure.

Affected Public: Business or other for-profit.

Number of Respondents: 323.

Number of Annual Responses: 885,762.

Estimated Time Per Response: Varies from 30 seconds to read and record air-quality test results to one hour to inspect, load test, and complete and maintain a certification record for a hoist.

Total Burden Hours: 57,949.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $117,000.

Description: Seven paragraphs in the Underground Construction Standard (''the Standard'') require employers to post warning signs or notices during underground construction; these paragraphs are (b)(3), (i)(3), (j)(1)(vi)(A), (m)(2)(ii), (o)(2), (q)(11), and (t)(1)(iv)(B). The warning signs and notices required by these paragraphs enable employers to effectively alert employees to the presence of hazards or potential hazards at the job site, thereby preventing employee exposure to hazards or potential hazards associated with underground construction that could cause death or serious harm.

Certification inspection records for hoist. Paragraph (t)(i)(xxi) of the Standard requires employers to inspect and load test hoists when they install them, and at least annually thereafter; they must also inspect and load test a hoist after making any repairs or alterations to it that affect its structural integrity, and after tripping a safety device on the hoist. Employers must also prepare a certification record of each inspection and load test that includes specified information, and maintain the most recent certification record until they complete the construction project.

Establishing and maintaining a written record of the most recent inspection and load test alerts equipment mechanics to problems identified during the inspection. Prior to returning the equipment to service, employers can review the records to ensure that the mechanics performed the necessary repairs and maintenance. Accordingly, by using only equipment that is in safe working order, employers will prevent severe injury and death to the equipment operators and other employees who work near the equipment. In addition, these records provide the most efficient means for OSHA compliance officers to determine that an employer performed the required inspections and load tests, thereby assuring that the equipment is safe to operate.

Developing and maintaining records for air-quality tests. Paragraph (j)(3) of the Standard mandates that employers develop records for air-quality tests performed under paragraph (j), including air-quality tests required by paragraphs (j)(1)(ii)(A) through (j)(1)(iii)(A), (j)(1)(iii)(B), (j)(1)(iii)(C), (j)(1)(iii)(D), (j)(1)(iv), (j)(1)(v)(A), (j)(1)(v)(B), and (j)(2)(i) through (j)(2)(v). Paragraph (j) also requires that air-quality records include specified information, and that employers

maintain the records until the underground-construction project is complete; they must also make the records available to OSHA compliance officers on request.

Maintaining records of air-quality tests allow employers to document atmospheric hazards, and to ascertain the effectiveness of controls (especially ventilation) and implement additional controls if necessary.

Accordingly, these requirements prevent serious injury and death to employees who work on underground-construction projects. In addition, these records provide an efficient means for employees to evaluate the accuracy and effectiveness of an employer's exposure-reduction program, and for OSHA compliance officers to determine that employers performed the required tests and implemented appropriate controls.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Construction Standards on Posting Emergency Telephone Numbers and Floor Load Limits.

OMB Number: 1218–0093.

Frequency: On occasion.

Type of Response: Third party disclosure.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; and State, local, or tribal government.

Number of Respondents: 74,325.

Number of Annual Responses: 74,325.

Estimated Time per Response: 2 minutes for posting an emergency telephone number and 15 minutes for posting floor load limits.

Total Burden Hours: 8,901.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Two Construction standards, ''Medical Services and First Aid'' (Sec. 1926.50), and ''General Requirements for Storage'' (Sec. 1926.250), contain posting provisions. Paragraph (f) of Sec. 1926.50 requires employers to post emergency telephone numbers for physicians, hospitals, or ambulances at the worksite if the 911 emergency telephone services is not available; in the event an employee has a serious injury at the worksite, this posting requirement expedites emergency medical treatment of the employee. Paragraph (a)(2) of Sec. 1926.250 specifies that employers must post the maximum safe load limits of floors located in storage areas inside buildings or other structures, unless the floors are on grade. This provision prohibits employers from overloading floors in areas used to store material and equipment in multi-story units that are under construction, thereby preventing the floors from collapsing and seriously injuring employees.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Cranes and Derricks Standards for Construction: Posting Weight and Load Capacity of Personnel Platforms.

OMB Number: 1218–0151.

Frequency: On occasion.

Type of Response: Third party disclosure.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; and State, local, or tribal government.

Number of Respondents: 2,750.

Number of Annual Responses: 2,750.

Estimated Time per Response: 5 minutes.

Total Burden Hours: 229.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Paragraph (g)(4)(ii)(I) of the Cranes and Derricks Standard for Construction (Sec. 1926.550) requires employers to post conspicuously with a plate or other permanent marking the weight and rated load capacity or maximum intended loads of each platform used to raise and lower employees to a worksite using a crane or derrick. This requirement helps employers to avoid exceeding the lifting capacity of such platforms and the cranes or derrick being used to lift the platforms. Therefore, this requirement can prevent the platform, crane, or derrick from collapsing and causing serious injury or death to employees on or below the platform.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–4211 Filed 3–3–05; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

Revised Schedule of Remuneration for the UCX Program

Under Section 8521(a)(2) of Title 5 of the United States Code, the Secretary of Labor is required to issue a Schedule of Remuneration specifying the pay and allowances for each pay grade of members of the military services. The schedules are used to calculate the base period wages and benefits payable under the Unemployment Compensation for Ex-servicemembers (UCX) Program.

The revised schedule reflects increases in military pay and allowances which are effective as of January 2, 2005.

Accordingly, the following new Schedule of Remuneration, issued pursuant to 20 CFR 614.12(c), applies to UCX ''first claims'' filed beginning with the first day of the first week which begins on or after January 2, 2005.

Pay grade	Monthly wage rate
(1) *Commissioned Officers*	
0–10	$15,794.44
0–9	15,505.47
0–8	14,332.05
0–7	13,029.68
0–6	11,110.25
0–5	9,350.01
0–4	7,980.46
0–3	6,243.46
0–2	4,978.80
0–1	3,793.06
(2) *Commissioned Officers With Over 4 Years Active Duty As An Enlisted Member or Warrant Officer*	
0–3E	7,261.85
0–2E	5,954.09
0–1E	5,070.74
(3) *Warrant Officers*	
W–5	8,241.70
W–4	7,290.50
W–3	6,237.04
W–2	5,348.60
W–1	4,486.11
(4) *Enlisted Personnel*	
E–9	6,979.58
E–8	5,876.55
E–7	5,176.04
E–6	4,475.77
E–5	3,704.19
E–4	3,071.39
E–3	2,751.65
E–2	2,618.25
E–1	2,388.62

The publication of this new Schedule of Remuneration does not revoke or change the period of time for any prior schedule that was in effect.

Signed at Washington, DC, on February 28, 2005.

Emily Stover DeRocco,

Assistant Secretary of Labor.

[FR Doc. E5–896 Filed 3–3–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from the date of notice in the **Federal Register** or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration be the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at (*http://www.access.gpo.gov/davisbacon*). They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed in Washington, DC this 24th day of February, 2005.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 05–3993 Filed 3–3–05; 8:45 am]

BILLING CODE 4510–27–M

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 05–03]

Notice of March 14, 2005 Millennium Challenge Corporation Board of Directors Meeting; Sunshine Act Meeting

AGENCY: Millennium Challenge Corporation.

TIME AND DATE: 1–3 p.m., Monday, March 14, 2005.

PLACE: Department of State, C Street Entrance, Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Joyce B. Lanham at *Board@mcc.gov* or 202–521–3600.

STATUS: Meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board of Directors (the ''Board'') of the Millennium Challenge Corporation (''MCC'') will hold a quarterly meeting of the Board to discuss and consider a proposed Millennium Challenge Account (''MCA'') Compact under the provisions of Section 605(a) of the Millennium Challenge Act, codified at 22 U.S.C. 7706(a); other information relating to Compact development efforts with other MCA-eligible countries; the MCC Threshold Program; and certain administrative matters. The meeting will be closed to the public because it is expected to involve the consideration of classified information and information relating to the internal personnel practices of MCC.

Dated: March 2, 2005.

Jon A. Dyck,

Vice President and General Counsel, Millennium Challenge Corporation.

[FR Doc. 05–4324 Filed 3–2–05; 11:12 am]

BILLING CODE 9210–01–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 05–02]

Interim Environmental Guidelines for Public Comment

AGENCY: Millennium Challenge Corporation.

SUMMARY: The purpose of these Guidelines is to help ensure that the projects undertaken as a part of the Millennium Challenge Compacts are environmentally sound, designed to operate in compliance with relevant regulatory requirements, and are not likely to cause a significant environmental health and safety hazard. In order to provide guidance to MCC eligible countries as they develop Compacts, MCC will use these procedures as interim Environmental Guidelines throughout the comment period.

Public Comment: For a ninety-day period beginning on the date of publication of this notice in the **Federal Register**, the Millennium Challenge Corporation will accept public comment on the interim Environmental Guidelines.

Contact Information: Public comments should be submitted through the MCC website at *www.mcc.gov* or in writing addressed to: Public Comment on Environmental Guidelines, Millennium Challenge Corporation, P.O. Box 12825, Arlington, VA 22219–2825.

Environmental Guidelines

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Statement of Principles

The Millennium Challenge Corporation (''MCC'') recognizes that the pursuit of sustainable economic growth and a healthy environment are necessarily related. The purpose of these guidelines is to establish an environmental review process to ensure that the projects undertaken as part of programs funded under Millennium Challenge Compacts with eligible countries (''Compacts'') are environmentally sound, are designed to operate in compliance with applicable regulatory requirements, and, as required by the legislation establishing MCC, are not likely to cause a significant environmental, health, or safety hazard.[1]

MCC is committed to program design that reflects the results of public participation in host countries during all phases of the program, integrating governmental interests with those of private business and civil society. In this spirit, MCC will work to ensure that the preparation of an environmental impact assessment will include consultation with affected parties.

Finally, MCC is committed to the principle of host-country ownership of a Compact proposal. Wherever appropriate, MCC will consider analyses, standards and norms of the host country. In addition, Compact projects should generally comply with relevant international environmental guidelines and requirements, including those that the host country is bound by under international agreements.

Sources of Policy; Applicability of Guidelines

The policies reflected in these guidelines are based, broadly speaking,

[1] Appendix A sets forth definitions of words and phrases used in these guidelines.

on sound sustainable development project design principles and international best practices in this field, including, but not limited to, the ''Principles of Environmental Impact Assessment Best Practices'' of the International Association for Impact Assessment, the environmental policies and guidelines of other United States government development assistance and financing entities, the environmental policies and guidelines of the multilateral development banks, the Common Approach developed by export credit agencies through the Organization for Economic Cooperation and Development (OECD), and the Equator Principles in use by international commercial banks. In addition, these guidelines reflect the following:

1. Section 605(e)(3) of the Millennium Challenge Act of 2003 prohibits MCC from providing assistance for any project that is ''likely to cause a significant environmental, health, or safety hazard.'' Consequently, the presence of such a project in a host country's proposal will preclude MCC funding (or continued funding) of that project. (See the discussion of ''environmental, health or safety hazard'' in Appendix A.)

2. Executive Order 12114, January 4, 1979, 44 FR 1957 (January 9, 1979) requires every federal agency taking actions encompassed by that Executive Order to establish procedures to implement it with respect to certain major Federal actions having significant effects on the environment outside the geographical borders of the United States and its territories and possessions. It is expected that the Executive Order will have limited applicability to MCC programs, but where the terms of the Executive Order apply, the procedures described in Appendix B will be used.

3. In those instances where MCC's actions or a project undertaken or funded under a Compact may significantly affect the quality of the environment of the United States, including its territories or possessions, MCC will require adherence to the environmental review procedures established by the Council on Environmental Quality under the National Environmental Policy Act (NEPA), in lieu of these guidelines.

MCC will review and revise these guidelines from time to time to reflect lessons learned in their application as well as relevant changes in international standards and norms of practice. In addition, MCC may from time to time provide such additional guidance to a host country during the implementation of a program as may be advisable in light of host country norms and international standards.

Environmental Screening

As early as possible in the Compact proposal review process, MCC will screen each project described in the Compact (generally referred to herein as a ''project'' or collectively, as ''projects''). MCC funding for a project is contingent upon satisfactory completion of environmental screening in accordance with these guidelines, and in general, the environmental screening of projects will be completed before the Compact is signed. For those projects that require a full environmental impact assessment, MCC funding for that project generally will be contingent upon completion of the EIA in accordance with these guidelines.

• Categorical Prohibition: As stated above, MCC may not provide assistance for any project that is ''likely to cause a significant environmental, health, or safety hazard.'' Accordingly, as part of its environmental screening, MCC will identify and exclude such projects from MCC financing, using the definition contained in Appendix A. Such projects will be classified as a Categorical Prohibition.

• Determination of Project Category: MCC will screen all Compact proposals to identify projects that require further review due to their potential adverse environmental impacts,[2] and projects that are in sensitive sectors or in or near sensitive locations. The result of this screening process will be an environmental classification following the recommendations contained in the OECD Common Approach and the practices of the World Bank, classifying in accordance with the potential environmental impact, and the extent of the environmental review required:

—Category A: A project is classified as Category A if it has the potential to have significant adverse environmental impacts. These impacts may affect an area broader than the sites or facilities subject to physical works. Category A, in principle, includes projects in sensitive sectors or located in or near sensitive areas. An illustrative list of sensitive sectors and sensitive locations is set out in Appendix C.

—Category B: A project is classified as Category B if its potential environmental impacts are less adverse than those of Category A projects. Typically, these impacts are site-specific, few if any of them are irreversible, and mitigation measures are more readily available.

—Category C: A project is classified as Category C if it is likely to have minimal or no adverse environmental impacts.

Environmental Review

The application of these guidelines to specific projects and the breadth, depth, and type of environmental review to be completed will depend on the nature, scale, and potential environmental impact of proposed projects.

Category A Projects

For Category A projects, MCC will require an Environmental Impact Assessment (EIA) as a condition for disbursement of funds under a Compact. An Environmental Impact Assessment evaluates the potential environmental risks and impacts of a specific project in its area of influence; examines alternatives to the project; identifies ways of improving project selection, siting, planning, design, and implementation by preventing, minimizing, mitigating, or compensating for adverse environmental impacts and enhancing positive impacts; and includes the process of mitigating and managing adverse environmental impacts during the implementation of a project. The recommended contents of an Environmental Impact Assessment report are included in Appendix D.

An Environmental Impact Assessment should be initiated as early as possible in project development and be integrated closely with the economic, financial, institutional, social, and technical analyses of a proposed project.

An Environmental Impact Assessment should take into account the natural environment (air, water, and land); human health and safety; social aspects (involuntary resettlement, indigenous peoples and cultural property); and transboundary and global environmental aspects.

An Environmental Impact Assessment should also take into account specific host-country conditions; the findings of host-country environmental studies; National Environmental Action Plans (NEAPs); the host country's overall policy framework and national legislation; the capabilities of the entity implementing the project, as they relate to managing environmental and social impacts; and obligations of the host country under relevant international environmental treaties and agreements.

While the completion of the Environmental Impact Assessment is

[2] ''Environmental impacts'' include the effects of a project on the surrounding natural environment and on the humans reliant on that environment, to include effects on cultural property, indigenous peoples, and involuntary resettlement, as well as the impacts on human health and safety.

the responsibility, either directly or indirectly, of the host country, MCC will advise and consult on Environmental Impact Assessment requirements. MCC will review the findings and recommendations of the Environmental Impact Assessment to ensure their consistency with these guidelines, and where appropriate, may require additional assessment work, including public consultation and information disclosure (see below).

Category B Projects

For environmental Category B projects, the MCC will require specific environmental analyses, as appropriate. The scope and format of the analyses will depend on the project and its environmental impacts. Generally, the scope of such work will be narrower than for Category A projects.

Category C Projects

Environmental Category C projects are unlikely to have adverse environmental impacts. However, the MCC reserves the right to require specific environmental studies, reporting, or training where relevant or where positive environmental impacts may be enhanced.

Public Consultation

Consistent with MCC's principles of host-country ownership of the projects implemented under its Compact, implementing entities will be expected to allow meaningful public consultation in the development of Compact-related Environmental Impact Assessments and make public the results of Environmental Impact Assessments.

Monitoring

In order to ensure compliance with measures to mitigate any adverse environmental impacts of projects undertaken pursuant to a Compact, MCC may condition MCC funding for the project on satisfactory implementation of those mitigation measures. The host country will be responsible for appropriate monitoring of project Environmental Impact Assessments during the term of the Compact. MCC will monitor compliance through the review of information provided by the implementing entity and through site visits.

These guidelines will be referenced and reflected in the Compact. The Compact will include a prohibition, for the full term of the Compact, on funding projects deemed likely to cause a significant environmental, health, or safety hazard.

Reporting

MCC will require regular reporting on all projects for which an Environmental Impact Assessment was completed and as otherwise requested by MCC. The reports should provide detailed information on realized environmental impacts and the status of the implementation of the Environmental Management Plan, including associated costs. MCC may modify its guidance to project implementers following the review of such reports.

Appendix A: Definitions

Environmental, Health or Safety Hazard—A project is deemed ''likely to cause a significant environmental, health, or safety hazard'' and, therefore, prohibited from receiving MCC funding, if:

(a) As a result of the project, even with mitigation efforts and proper use, there exists or will exist a substance, condition, or circumstance that represents a significant risk of harm to the environment or to human health because of the physical, chemical or biological effects of such substance, condition or circumstance;

(b) The project involves or will involve the production, procurement or intentional release of:

—Persistent Organic Pollutants (POPs) that the United States Environmental Protection Agency (USEPA) has identified as of greatest concern to the global community;[3]

—Any pesticide or industrial or consumer chemical that is listed by the United States Environmental Protection Agency as ''banned'' or ''severely restricted'' under the Prior Informed Consent (PIC) Program;[4] or

—A product (including an emission or effluent) that is prohibited or strictly regulated in the United States because its toxic effects on the environment create a serious public health risk; or

(c) The project is a physical project that is prohibited or strictly regulated by Federal law in the United States to protect the environment from radioactive substances, unless the MCC has made a final determination, taking into account a thorough Environmental Impact Assessment, that the project is not likely to cause a significant environmental, health, or safety hazard.

Environmental Impact Assessment (EIA)—Analysis that identifies the potential environmental risks and impacts of a specific project in its area of influence; examines alternatives to the project; identifies ways of improving project selection, siting, planning, design, and implementation by preventing, minimizing, mitigating, or compensating for adverse environmental impacts and enhancing positive impacts; and includes the process of mitigating and managing adverse environmental impacts during the implementation of a project. The scope and level of detail in an Environmental Impact Assessment should be commensurate with a project's potential impact. At a minimum, an Environmental Impact Assessment should include the information outlined in Appendix D: Environmental Impact Assessment Reports (also sometimes referred to as Environmental Impact Statements).

Environmental Management Plan (EMP)—An Environmental Management Plan describes mitigation, monitoring and institutional measures to be taken during project implementation to eliminate adverse impacts, offset them, or reduce them to acceptable levels.

Appendix B: Procedures Implementing Executive Order 12114

This Appendix sets forth the procedures that MCC will use to implement Executive Order 12114, January 4, 1979, 44 FR 1957 (January 9, 1979) (the ''Executive Order'').

1. Actions Covered

The MCC officer having the ultimate responsibility for authorizing and approving actions will take into consideration an appropriate environmental review before authorizing and approving any

a. Major Federal action that significantly affects the environment of the global commons outside the jurisdiction of any nation (*e.g.*, the oceans);

b. Major Federal action that significantly affects the environment of a foreign nation not involved or participating with the United States in the action; or

c. Major Federal action outside the United States that significantly affects natural or ecological resources of worldwide importance which the President has designated for protection or, in the case of resources protected under a binding international agreement, by the Secretary of State.

2. Type of Environmental Review

a. For actions specified in 1.a above, MCC will consider an Environmental Impact Assessment.

b. For actions specified in 1.b or 1.c above, MCC will take into consideration an appropriate environmental review in accordance with the criteria in the ''Environmental Review'' section of these guidelines.

3. State Department Coordination

MCC will contact the State Department for coordination of all communications with foreign governments concerning environmental agreements and other arrangements to implement sections 1 and 2 above.

Appendix C: Illustrative List of Sensitive Sectors and Sensitive Locations [5]

The following list is indicative and the types of projects it contains are examples only. This list is not intended to be exhaustive.

—Crude oil refineries (excluding undertakings manufacturing only

[3] *http://www.epa.gov/oppfeadl/international/pops.htm.*

[4] *http://www.epa.gov/oppfeadl/international/piclist.htm.*

[5] Source. EBRD Environmental Policy (*http://www.ebrd.org/enviro/index.htm*, also in use under the Organization for Economic Co-operation and Development (OECD) ''Common Approach.''

lubricants from crude oil) and installations for the gasification and liquefaction of 500 tons or more of coal or bituminous shale per day.

—Thermal power stations and other combustion installations with a heat output of 300 megawatts or more and nuclear power stations and other nuclear reactors, including the dismantling or decommissioning of such power stations or reactors (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).

—Installations designed for the production, or enrichment of nuclear fuels, the reprocessing, storage or final disposal of irradiated nuclear fuels, or for the storage, disposal or processing of radioactive waste.

—Integrated works for the initial smelting of cast-iron and steel; installations for the production of nonferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.

—Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos: for asbestos-cement products, with an annual production of more than 20,000 tons finished product; for friction material, with an annual production of more than 50 tons finished product; and for other asbestos utilization of more than 200 tons per year.

—Integrated chemical installations, *i.e.*, those installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are for the production of: basic organic chemicals; basic inorganic chemicals; phosphorous-, nitrogen- or potassium-based fertilizers (simple or compound fertilizers); basic plant health products and biocides; basic pharmaceutical products using a chemical or biological process; explosives.

—Construction of motorways, express roads and lines for long-distance railway traffic and of airports with a basic runway length of 2,100 meters or more; construction of a new road of four or more lanes, or realignment and/or widening of an existing road so as to provide four or more lanes, where such new road, or realigned and/or widened section of road would be 10 km or more in a continuous length.

—Pipelines, terminals, and associated facilities for the large-scale transport of gas, oil, and chemicals.

—Sea ports and also inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 tons; trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1,350 tons.

—Waste-processing and disposal installations for the incineration, chemical treatment or landfill of hazardous, toxic or dangerous wastes.

—Large [6] dams and other impoundments designed for the holding back or permanent storage of water.

—Groundwater abstraction projects or artificial groundwater recharge schemes in cases where the annual volume of water to be abstracted or recharged amounts to 10 million cubic meters or more.

—Industrial plants for the (a) production of pulp from timber or similar fibrous materials; (b) production of paper and board with a production capacity exceeding 200 air-dried metric tons per day.

—Peat extraction, quarries and open-cast mining, and processing of metal ores or coal.

—Extraction of petroleum and natural gas for commercial purposes.

—Installations for storage of petroleum, petrochemical, or chemical products with a capacity of 200,000 tons or more.

—Large-scale logging.

—Municipal wastewater treatment plants with a capacity exceeding 150,000 population equivalent.

—Municipal solid waste-processing and disposal facilities.

—Large-scale tourism and retail development.

—Construction of overhead electrical power lines.

—Large-scale land reclamation.

—Large-scale primary agriculture/silviculture involving intensification or conversion of natural habitats.

—Plants for the tanning of hides and skins where the treatment capacity exceeds 12 tons of finished products per day.

—Installations for the intensive rearing of poultry or pigs with more than: 40,000 places for poultry; 2,000 places for production pigs (over 30 kg); or 750 places for sows.

—Projects that are planned to be carried out in sensitive locations or are likely to have a perceptible impact on such locations, even if the project category does not appear in the above list. Such sensitive locations include National Parks and other protected areas identified by national or international law, and other sensitive locations of international, national or regional importance, such as wetlands, forests with high biodiversity value, areas of archaeological or cultural significance, and areas of importance for indigenous peoples or other vulnerable groups.

Appendix D: Environmental Impact Assessment Reports [7]

The scope and level of detail of an Environmental Impact Assessment should be commensurate with the potential impacts of the project. The Environmental Impact Assessment report should include the following items (not necessarily in the order shown):

• Executive summary: concisely discusses significant findings and recommended actions.

• Policy, legal and administrative framework: discusses the policy, legal, and administrative framework within which the Environmental Impact Assessment is carried out.

• Project description: describes the proposed project and its geographic, ecological, social, and temporal context, including any offsite investments that may be required (*e.g.*, dedicated pipelines, access roads, power plants, water supply, housing, and raw material and product storage facilities). Indicates the need for any resettlement or social development plan. Normally includes a map showing the project site and the project's area of influence.

• Baseline data: assesses the dimensions of the study area and describes relevant physical, biological, and socio-economic conditions, including any changes anticipated before the project commences. Also, it takes into account current and proposed development projects within the project area but not directly connected to the project. Data should be relevant to decisions about project location, design, operation, or mitigatory measures; the section indicates accuracy, reliability and sources of the data.

• Environmental Impacts: predicts and assesses the project's likely positive and negative impacts, including the impact on involuntary resettlement, indigenous peoples and cultural property, in quantitative terms to the extent possible. It identifies mitigation measures and any residual negative impacts that cannot be mitigated. It explores opportunities for environmental enhancement. Identifies and estimates the extent and quality of available data, key data gaps, and uncertainties associated with predictions, and specifies topics that do not require further attention.

• Analysis of alternatives: systematically compares feasible alternatives to the proposed project site, technology, design and operation-including the ''without project'' situation-in terms of their potential environmental impacts; the feasibility of mitigating these impacts; their capital and recurrent costs; their suitability under local conditions; and their institutional, training and monitoring requirements. For each of the alternatives, it quantifies the environmental impacts to the extent possible, and attaches economic values where feasible. It states the basis for selecting the particular project design proposed and justifies recommended emission levels and approaches to pollution prevention and abatement.

• Environmental Management Plan: describes mitigation, monitoring and institutional measures to be taken during project implementation to eliminate adverse impacts, offset them, or reduce them to acceptable levels.

• Consultation: lists and describes consultation meetings, including consultations for obtaining the informed views of the affected people, local nongovernmental organizations and regulatory agencies.

[6] A large dam is a dam with a height of 15 meters or more from the foundation or a dam that is between five and 15 meters high with a reservoir volume of more than three million cubic meters (the definition used by the International Commission on Large Dams (ICOLD)).

[7] This Appendix is based on the World Bank Operational Manual, OP 4.01, which is also in use under the Organization for Economic Co-operation and Development (OECD) ''Common Approach.''

Dated: February 28, 2005.

Frances C. McNaught,

Vice President, Domestic Relations, Millennium Challenge Corporation.

[FR Doc. 05–4216 Filed 3–3–05; 8:45 am]

BILLING CODE 9210–01–U

NATIONAL SCIENCE FOUNDATION

Alan T. Waterman Award Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Alan T. Waterman Award Committee, #1172.

Date and Time: Tuesday, March 8, 2005, 8:30 a.m.–12:30 p.m., room 1235.

Place: Arlington, Virginia.

Type of Meeting: Closed.

Contact Person: Mrs. Susan E. Fannoney, Executive Secretary, Room 1220, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–8096.

Purpose of Meeting: To provide advice and recommendations in the selection of the Alan T. Waterman Award recipient.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Late Notice: To administrative oversight.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: March 1, 2005.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 05–4266 Filed 3–3–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

The EarthScope Science and Education Advisory Committee (16638); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: The EarthScope Science and Education Advisory Committee (ESEC) meeting.

Dates and Time: 1 p.m.–5 p.m. Thursday, March 31, 2005. 8:30 a.m.–12 p.m. Friday, April 1, 2005.

Place: Hyatt Hotel/Tamaya Resort, 1300 Tuyuna Trail, Santa Ana Pueblo, NM 87004.

Type of Meeting: Part open (see agenda below).

Contact Person: Dr. Kaye Shedlock, EarthScope Program Officer, Division of Earth Sciences, Room 785, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–8559.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To carry out EarthScope proposal and management review, and to provide advice, recommendations, and oversight concerning EarthScope construction, operation, science and education support.

Agenda: Open March 31, 2004 1 p.m.–5 p.m.—To review program and facility management, installation technical plans, science plans, and progress reports of EarthScope.

Open April 1, 2004 8:30 a.m.–10 a.m.—To review program and facility management, installation technical plans, science plans, and progress reports of EarthScope.

Closed: April 1, 2005, 10 a.m.–12 p.m.—To review the EarthScope Operation and Maintenance Plan covering funding for personnel and subcontracts for the operation phase of EarthScope; proposal actions from the 2005 EarthScope Solicitation, including the discussion of proposals still under review.

Reason for Closing: The projects being reviewed include information of a proprietary or confidential nature, including technical information; financial data and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 1, 2005.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 05–4267 Filed 3–3–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–412]

FirstEnergy Corporation and FirstEnergy Nuclear Operating Company; Notice of Receipt and Availability of Application for Renewal of Beaver Valley Power Station, Units 1 and 2 Facility Operating License Nos. DPR–66 and NPF–73 for an Additional 20-year Period

The U.S. Nuclear Regulatory Commission (NRC or Commission) has received an application, dated February 9, 2005, from FirstEnergy Corporation and FirstEnergy Nuclear Operating Company, filed pursuant to sections 104b (DPR–66) and 103 (NPF–73) of the Atomic Energy Act of 1954, as amended, and 10 CFR part 54, to renew the operating licenses for the Beaver Valley Power Station, Units 1 and 2, respectively. Renewal of the licenses would authorize the applicant to operate each facility for an additional 20-year period beyond the period specified in the respective current operating licenses. The current operating license for Beaver Valley Power Station, Unit 1 (DPR–66) expires on January 29, 2016. The current operating license for Beaver Valley Power Station, Unit 2 (NPF–73) expires on May 27, 2027. Beaver Valley Power Station, Units 1 and 2 are pressurized water reactors designed by Westinghouse. Both units are located near Shippingport, PA. The acceptability of the tendered application for docketing, and other matters, including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

Copies of the application are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20582 or electronically from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room under accession number ML050540047. The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*. In addition, the application is available at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html*, on the NRC Web page, while the application is under review. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR Reference staff at 1–800–397–4209, extension (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

A copy of the license renewal application for the Beaver Valley Power Station, Units 1 and 2, is also available to local residents near the Beaver Valley Power Station, Units 1 and 2, at the B. F. Jones Memorial Library, 663 Franklin Ave., Aliquippa, PA 15001.

Dated at Rockville, Maryland, this 23 day of February 2005.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo, Program Director,

License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 05–4174 Filed 3–3–05 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–2]

Notice of Issuance of Renewed Materials License SNM–2501; Virginia Electric and Power Company, Surry Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued renewed Materials License SNM–2501 to Virginia Electric and Power Company (Dominion) for the receipt, possession, transfer, and storage of spent fuel at the Surry Independent Spent Fuel Storage Installation (ISFSI), located in Surry County, Virginia. The renewed license authorizes operation of the Surry ISFSI in accordance with the provisions of the renewed license and its Technical Specifications.

The application for the renewed license complies with the standards and requirements of the Atomic Energy Act of 1954 (the Act), as amended, and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter 1, which are set forth in the license. Public notice of the proposed action and opportunity for hearing regarding the proposed issuance of the renewed license was published in the **Federal Register** on January 14, 2003 (69 FR 1871).

Supporting documentation is available for inspection at NRC's Public Electronic Reading Room at: *http://www.nrc.gov/reading-rm/ADAMS.html*. A copy of the license application, dated April 29, 2002 as supplemented October 6, 2003, and the staff's EA, dated February 2005, can be found at this site using the ADAMS accession numbers ML021290068, ML032900118, and ML040560156. Any questions should be referred to Mary Jane Ross-Lee, Spent Fuel Project Office, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Mailstop O13D13, telephone (301) 415–3781; fax number (301) 415–8555.

Dated in Rockville, Maryland, this 25th day of February, 2005.

For the Nuclear Regulatory Commission.

Mary Jane Ross-Lee,

Senior Project Manager, Licensing Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 05–4175 Filed 3–3–05; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection Title:* Statement Regarding Contributions and Support of Children.

(2) *Form(s) Submitted:* G–139.

(3) *OMB Number:* 3220–0195.

(4) *Expiration Date of Current OMB Clearance:* 05/31/2005.

(5) *Type of Request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated Annual Number of Respondents:* 500.

(8) *Total Annual Responses:* 500.

(9) *Total Annual Reporting Hours:* 500.

(10) *Collection Description:* Dependency on the employee for at least one-half support is a condition affecting eligibility for increasing an employee or spouse annuity under the social security overall minimum provisions on the basis of the presence of a dependent child, the employee's natural child in limited situations, adopted children, stepchildren, grandchildren and step-grandchildren. The information collected solicits financial information needed to determine entitlement to a child's annuity based on actual dependency.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 05–4168 Filed 3–3–05; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51277/February 28, 2005]

Order Making Fiscal 2005 Mid-Year Adjustment to the Fee Rates Applicable Under Sections 31(b) and (c) of the Securities Exchange Act of 1934

I. Background

Section 31 of the Securities Exchange Act of 1934 (''Exchange Act'') requires each national securities exchange and national securities association to pay transaction fees to the Commission.[1] Specifically, Section 31(b) requires each national securities exchange to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities transacted on the exchange.[2] Section 31(c) requires each national securities association to pay to the Commission fees based on the aggregate dollar amount of sales of certain securities transacted by or through any member of the association other than on an exchange.[3]

Sections 31(j)(1) and (3) require the Commission to make annual adjustments to the fee rates applicable under Sections 31(b) and (c) for each of the fiscal years 2003 through 2011, and one final adjustment to fix the fee rates for fiscal year 2012 and beyond.[4] Section 31(j)(2) requires the Commission, in certain circumstances, to make a mid-year adjustment to the fee rates in fiscal 2002 through fiscal 2011.[5] The annual and mid-year adjustments are designed to adjust the fee rates in a given fiscal year so that, when applied to the aggregate dollar volume of sales for the fiscal year, they are reasonably likely to produce total fee collections under Section 31 equal to the ''target offsetting collection amount'' specified in Section 31(l)(1) for that fiscal year.[6] For fiscal 2005, the target offsetting collection amount is $1,220,000,000.[7]

Congress established the target offsetting collection amounts in the Investor and Capital Markets Fee Relief Act (''Fee Relief Act'') by applying reduced fee rates to the Congressional Budget Office's (''CBO'') January 2001 projections of dollar volume for fiscal years 2002 through 2011.[8] In any fiscal

[1] 15 U.S.C. 78ee.

[2] 15 U.S.C. 78ee(b).

[3] 15 U.S.C. 78ee(c).

[4] 15 U.S.C. 78ee(j)(1) and (j)(3).

[5] 15 U.S.C. 78ee(j)(2).

[6] 15 U.S.C. 78ee(*l*)(1).

[7] *Id.*

[8] The target offsetting collection amounts for fiscal 2002 through 2006 were determined by

Continued

year through fiscal 2011, the annual, and in certain circumstances, mid-year adjustment mechanisms will result in additional fee rate reductions if the CBO's January 2001 projection of dollar volume for the fiscal year proves to be too low, and fee rate increases if the CBO's January 2001 projection of dollar volume for the fiscal year proves to be too high.

II. Determination of the Need for a Mid-Year Adjustment in Fiscal 2005

Under Section 31(j)(2) of the Exchange Act, the Commission must make a mid-year adjustment to the fee rates under Sections 31(b) and (c) in fiscal year 2005 if it determines, based on the actual aggregate dollar volume of sales during the first five months of the fiscal year, that the baseline estimate ($37,902,443,515,254) is reasonably likely to be 10% (or more) greater or less than the actual aggregate dollar volume of sales for fiscal 2005.[9] To make this determination, the Commission must estimate the actual aggregate dollar volume of sales for fiscal 2005.

Based on data provided by the national securities exchanges and the national securities association that are subject to Section 31,[10] the actual aggregate dollar volume of sales during the first four months of fiscal 2005 was $10,211,172,018,628.[11] Using these data and a methodology for estimating the aggregate dollar amount of sales for the remainder of fiscal 2005 (developed after consultation with the CBO and the OMB),[12] the Commission estimates that the aggregate dollar amount of sales for the remainder of fiscal 2005 to be $24,166,536,269,237. Thus, the Commission estimates that the actual aggregate dollar volume of sales for all of fiscal 2005 will be $34,377,708,287,865.

Because the baseline estimate of $37,902,443,515,254 is more than 10% greater than the $34,377,708,287,865 estimated actual aggregate dollar volume of sales for fiscal 2005, Section 31(j)(2) of the Exchange Act requires the Commission to issue an order adjusting the fee rates under Sections 31(b) and (c).

III. Calculation of the Uniform Adjusted Rate

Section 31(j)(2) specifies the method for determining the mid-year adjustment for fiscal 2005. Specifically, the Commission must adjust the rates under Sections 31(b) and (c) to a ''uniform adjusted rate that, when applied to the revised estimate of the aggregate dollar amount of sales for the remainder of [fiscal 2005], is reasonably likely to produce aggregate fee collections under Section 31 (including fees collected during such 5-month period and assessments collected under [Section 31(d)]) that are equal to [$1,220,000,000].''[13] In other words, the uniform adjusted rate is determined by subtracting fees collected prior to the effective date of the new rate and assessments collected under Section 31(d) during all of fiscal 2005 from $1,220,000,000, which is the target offsetting collection amount for fiscal 2005. That difference is then divided by the revised estimate of the aggregate dollar volume of sales for the remainder of the fiscal year following the effective date of the new rate.

The Commission estimates that it will collect $438,149,779 in fees for the period prior to the effective date of the mid-year adjustment[14] and $20,973 in assessments on round turn transactions in security futures products during all of fiscal 2005. Using the methodology referenced in Part II above, the Commission estimates that the aggregate dollar volume of sales for the remainder of fiscal 2005 following the effective date of the new rate will be $18,708,485,344,202. Based on these estimates, the uniform adjusted rate is $41.80 per million of the aggregate dollar amount of sales of securities.[15]

The Commission recognizes that this fee rate is higher than the current fee rate of $32.90 per million. However, the new fee rate is established by the statutory mid-year adjustment mechanism and is a direct consequence of more recent information on the dollar amount of sales of securities. The aggregate dollar amount of sales of securities subject to Section 31 fees is illustrated in Appendix A.

IV. Effective Date of the Uniform Adjusted Rate

Section 31(j)(4)(B) of the Exchange Act provides that a mid-year adjustment shall take effect on April 1 of the fiscal year in which such rate applies. Therefore, the exchanges and the national securities association that are subject to Section 31 fees must pay fees under Sections 31(b) and (c) at the uniform adjusted rate of $41.80 per million for sales of securities transacted on April 1, 2005, and thereafter until the annual adjustment for fiscal 2005 is effective.[16]

applying a rate of $15 per million to the CBO's January 2001 projections of dollar volume for those fiscal years. The target offsetting collection amounts for fiscal 2007 through 2011 were determined by applying a rate of $7 per million to the CBO's January 2001 projections of dollar volume for those fiscal years. For example, CBO's January 2001 projection of dollar volume for fiscal 2005 was $81,300,000,000,000. Applying the initial rate under the Fee Relief Act of $15 per million to that projection produces the target offsetting collection amount for fiscal 2005 of $1,220,000,000.

[9] The amount $37,902,443,515,254 is the baseline estimate of the aggregate dollar amount of sales for fiscal year 2005 calculated by the Commission in its Order Making Fiscal 2005 Annual Adjustments to the Fee Rates Applicable Under Section 6(b) of the Securities Act of 1933 and Sections 13(e), 14(g), 31(b) and 31(c) of the Securities Exchange Act of 1934, Rel. No. 33–8418 (April 30, 2004), 69 FR 25632 (May 7, 2004).

[10] The NASD, Inc. (''NASD'') and each exchange is required to file a monthly report on Form R31 containing dollar volume data on sales of securities subject to Section 31. The report is due on the 10th business day following the month for which the exchange or association provides dollar volume data.

[11] Although Section 31(j)(2) indicates that the Commission should determine the actual aggregate dollar volume of sales for fiscal 2005 ''based on the actual aggregate dollar volume of sales during the first 5 months of such fiscal year,'' data are only available for the first four months of the fiscal year as of the date the Commission is required to issue this order, *i.e.*, March 1, 2005. Dollar volume data on sales of securities subject to Section 31 for February 2005 will not be available from the exchanges and the NASD for several weeks.

[12] *See* Appendix A.

[13] 15 U.S.C. 78ee(j)(2). The term ''fees collected'' is not defined in Section 31. Because national securities exchanges and national securities associations are not required to pay the first installment of Section 31 fees for fiscal 2005 until March 15, the Commission will not ''collect'' any fees in the first five months of fiscal 2005. *See* 15 U.S.C. 78ee(e). However, the Commission believes that, for purposes of calculating the mid-year adjustment, Congress, by stating in Section 31(j)(2) that the ''uniform adjusted rate * * * is reasonably likely to produce aggregate fee collections under Section 31 * * * that are equal to [$1,220,000,000],'' intended the Commission to include the fees that the Commission will collect based on transactions in the six months before the effective date of the mid-year adjustment.

[14] This calculation is based on applying a fee rate of $23.40 per million to the aggregate dollar volume of sales of securities subject to Section 31 through January 6, 2005, and a rate of $32.90 for the period from January 7, 2005 to March 31, 2005. Because the Commission's regular appropriation for fiscal year 2005 was not enacted prior to the end of fiscal year 2004, Exchange Act Section 31(k), the ''Lapse of Appropriation'' provision, required that the fee rate in use at the end of fiscal year 2004, $23.40 per million, remain in effect until 30 days after the appropriation was enacted. *See also* Order Making Fiscal 2005 Annual Adjustments to the Fee Rates Applicable Under Section 6(b) of the Securities Act of 1933 and Sections 13(e), 14(g), 31(b) and 31(c) of the Securities Exchange Act of 1934, Rel. No. 33–8418 (April 30, 2004), 69 FR 25632 (May 7, 2004). The Commission's regular appropriation for fiscal year 2005 was enacted on December 8, 2004, and the $32.90 per million rate went into effect 30 days later, by operation of the statute. *See* Exchange Act Section 31(j)(4)(A)(ii).

[15] The calculation is as follows: ($1,220,000,000–$438,149,779 − $20,973)/$18,708,485,344,202 = $0.0000417901. Consistent with the system requirements of the exchanges and the NASD, the Commission rounds this result to the seventh decimal point, yielding a rate of $41.80 per million.

[16] Section 31(j)(1) and Section 31(g) of the Exchange Act require the Commission to issue an order no later than April 30, 2005, adjusting the fee rates applicable under Sections 31(b) and (c) for fiscal 2006. These fee rates for fiscal 2006 will be effective on the later of October 1, 2005 or thirty

V. Conclusion

Accordingly, pursuant to Section 31 of the Exchange Act,[17]

It is hereby ordered that each of the fee rates under Sections 31(b) and (c) of the Exchange Act shall be $41.80 per $1,000,000 of the aggregate dollar amount of sales of securities subject to these sections effective April 1, 2005.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 8010–01–P

Appendix A

A. Baseline Estimate of the Aggregate Dollar Amount of Sales

First, calculate the average daily dollar amount of sales (ADS) for each month in the sample (January 1995–January 2005). The data obtained from the exchanges and NASD are presented in Table A. The monthly aggregate dollar amount of sales from all exchanges and the NASD is contained in column C.

Next, calculate the change in the natural logarithm of ADS from month-to-month. The average monthly change in the logarithm of ADS over the entire sample is 0.016 and the standard deviation 0.118. Assume the monthly percentage change in ADS follows a random walk. The expected monthly percentage growth rate of ADS is 2.4 percent.

Now, use the expected monthly percentage growth rate to forecast total dollar volume. For example, one can use the ADS for January 2005 ($128,432,971,367) to forecast ADS for February 2005 ($131,460,417,421 = $128,432,971,367 × 1.024).[18] Multiply by the number of trading days in February 2005 (19) to obtain a forecast of the total dollar volume for the month ($2,497,747,931,005). Repeat the method to generate forecasts for subsequent months.

The forecasts for total dollar volume are in column G of Table A. The following is a more formal (mathematical) description of the procedure:

1. Divide each month's total dollar volume (column C) by the number of trading days in that month (column B) to obtain the average daily dollar volume (ADS, column D).

2. For each month t, calculate the change in ADS from the previous month as $\Delta_t = \log(ADS_t / ADS_{t-1})$, where log (x) denotes the natural logarithm of x.

3. Calculate the mean and standard deviation of the series $\{\Delta_1, \Delta_2, * * *, \Delta_{120}\}$. These are given by $\mu = 0.016$ and $\sigma = 0.118$, respectively.

4. Assume that the natural logarithm of ADS follows a random walk, so that Δ_s and Δ_t are statistically independent for any two months s and t.

5. Under the assumption that Δ_t is normally distributed, the expected value of ADS_t/ADS_{t-1} is given by $\exp(\mu + \sigma^2/2)$, or on average $ADS_t = 1.024 \times ADS_{t-1}$.

6. For February 2005, this gives a forecast ADS of 1.024 × $128,432,971,367 = $131,460,417,421. Multiply this figure by the 19 trading days in February 2005 to obtain a total dollar volume forecast of $2,497,747,931,005.

7. For March 2005, multiply the February 2005 ADS forecast by 1.024 to obtain a forecast ADS of $134,559,227,001. Multiply this figure by the 22 trading days in March 2005 to obtain a total dollar volume forecast of $2,960,302,994,030.

8. Repeat this procedure for subsequent months.

B. Using the Forecasts From A To Calculate the New Fee Rate

1. Determine the aggregate dollar volume of sales between 10/1/04 and 1/6/05 to be $8,143,963,787,852. Multiply this amount by the fee rate of $23.40 per million dollars in sales during this period and get $190,568,753 in actual fees collected during 10/1/04 and 1/6/05. Determine the actual and projected aggregate dollar volume of sales between 1/7/05 and 3/31/05 to be $7,525,259,155,811. Multiply this amount by the fee rate of $32.90 per million dollars in sales during this period and get an estimate of $247,581,026 in actual and projected fees collected during 1/7/05 and 3/31/05.

2. Estimate the amount of assessments on security futures products collected during 10/1/04 and 9/30/05 to be $20,973 by summing the amounts collected through January of $5,845 with projections of a 2.4% monthly increase in subsequent months.

3. Determine the projected aggregate dollar volume of sales between 4/1/05 and 9/30/05 to be $18,708,485,344,202.

4. The rate necessary to collect the target $1,220,000,000 in fee revenues is then calculated as: ($1,220,000,000 − $190,568,753 − $247,581,026 − $20,973) ÷ $18,708,485,344,202 = .000041790.

5. Consistent with the system requirements of the exchanges and the NASD, round the rate to the seventh decimal point, yielding a rate of .0000418 (or $41.80 per million).

days after the enactment of the Commission's regular appropriation for fiscal 2006.

[17] 15 U.S.C. 78ee.

[18] The value 1.024 has been rounded. All computations are done with the unrounded value.

Table A. Estimation of baseline of the aggregate dollar amount of sales.
(Methodology developed in consultation with the Office of Management and Budget and the Congressional Budget Office.)

Fee rate calculation.

a. Baseline estimate of the aggregate dollar amount of sales, 10/1/04 to 1/6/05 ($Millions)	8,143,964
b. Baseline estimate of the aggregate dollar amount of sales, 1/7/05 to 3/31/05 ($Millions)	7,525,259
c. Baseline estimate of the aggregate dollar amount of sales, 4/1/05 to 9/30/05 ($Millions)	18,708,485
d. Estimated collections in assessments on security futures products in FY 2005 ($Millions)	0.021
e. Implied fee rate (($1,220,000,000 - 0.0000234*a - 0.0000329*b - d) /c)	$41.79009

Data

(A) Month	(B) # of Trading Days in Month	(C) Aggregate Dollar Amount of Sales	(D) Average Daily Dollar Amount of Sales (ADS)	(E) Change in LN of ADS	(F) Forecast ADS	(G) Forecast Aggregate Dollar Amount of Sales
Jan-95	21	379,051,209,771	18,050,057,608	-		
Feb-95	19	389,060,886,035	20,476,888,739	0.126		
Mar-95	23	491,872,609,718	21,385,765,640	0.043		
Apr-95	19	435,327,633,818	22,911,980,727	0.069		
May-95	22	531,855,060,379	24,175,230,017	0.054		
Jun-95	22	574,332,213,609	26,106,009,710	0.077		
Jul-95	20	576,049,335,831	28,802,466,792	0.098		
Aug-95	23	570,638,726,060	24,810,379,394	-0.149		
Sep-95	20	578,133,939,676	28,906,696,984	0.153		
Oct-95	22	642,190,178,035	29,190,462,638	0.010		
Nov-95	21	596,424,550,565	28,401,169,075	-0.027		
Dec-95	20	624,610,441,037	31,230,522,052	0.095		
Jan-96	22	687,599,091,854	31,254,504,175	0.001		
Feb-96	20	687,232,471,273	34,361,623,564	0.095		
Mar-96	21	714,836,120,093	34,039,815,243	-0.009		
Apr-96	21	704,410,318,022	33,543,348,477	-0.015		
May-96	22	768,379,507,489	34,926,341,250	0.040		
Jun-96	20	631,098,780,223	31,554,939,011	-0.102		
Jul-96	22	688,428,728,384	31,292,214,927	-0.008		
Aug-96	22	570,109,772,036	25,914,080,547	-0.189		
Sep-96	20	617,243,881,688	30,862,194,084	0.175		
Oct-96	23	764,269,441,454	33,229,106,150	0.074		
Nov-96	20	748,494,700,419	37,424,735,021	0.119		
Dec-96	21	764,479,496,753	36,403,785,560	-0.028		
Jan-97	22	957,432,637,586	43,519,665,345	0.179		
Feb-97	19	837,174,183,446	44,061,799,129	0.012		
Mar-97	20	839,192,728,788	41,959,636,439	-0.049		
Apr-97	22	862,799,213,315	39,218,146,060	-0.068		
May-97	21	925,733,852,647	44,082,564,412	0.117		
Jun-97	21	930,409,085,859	44,305,194,565	0.005		
Jul-97	22	1,085,682,706,898	49,349,213,950	0.108		
Aug-97	21	1,031,344,138,751	49,111,625,655	-0.005		
Sep-97	21	1,036,460,244,602	49,355,249,743	0.005		
Oct-97	23	1,329,653,432,718	57,811,018,814	0.158		
Nov-97	19	926,017,878,587	48,737,783,084	-0.171		
Dec-97	22	1,046,220,806,199	47,555,491,191	-0.025		
Jan-98	20	1,037,925,292,902	51,896,264,645	0.087		
Feb-98	19	1,081,705,333,396	56,931,859,652	0.093		
Mar-98	22	1,259,994,685,467	57,272,485,703	0.006		
Apr-98	21	1,298,494,359,253	61,833,064,726	0.077		
May-98	20	1,110,221,658,995	55,511,082,950	-0.108		
Jun-98	22	1,243,779,791,913	56,535,445,087	0.018		
Jul-98	22	1,399,011,433,748	63,591,428,807	0.118		
Aug-98	21	1,307,501,463,442	62,261,974,450	-0.021		
Sep-98	21	1,352,428,235,083	64,401,344,528	0.034		
Oct-98	22	1,460,835,397,598	66,401,608,982	0.031		
Nov-98	20	1,298,403,768,065	64,920,188,403	-0.023		
Dec-98	22	1,442,697,787,306	65,577,172,150	0.010		

Jan-99	19	1,884,555,055,910	99,187,108,206	0.414		
Feb-99	19	1,656,058,202,765	87,160,958,040	-0.129		
Mar-99	23	1,908,967,664,074	82,998,594,090	-0.049		
Apr-99	21	2,177,601,770,622	103,695,322,411	0.223		
May-99	20	1,784,400,906,987	89,220,045,349	-0.150		
Jun-99	22	1,697,339,227,503	77,151,783,068	-0.145		
Jul-99	21	1,767,035,098,986	84,144,528,523	0.087		
Aug-99	22	1,692,907,150,726	76,950,325,033	-0.089		
Sep-99	21	1,730,505,881,178	82,405,041,961	0.068		
Oct-99	21	2,017,474,765,542	96,070,226,931	0.153		
Nov-99	21	2,348,374,009,334	111,827,333,778	0.152		
Dec-99	22	2,686,788,531,991	122,126,751,454	0.088		
Jan-00	20	3,057,831,397,113	152,891,569,856	0.225		
Feb-00	20	2,973,119,888,063	148,655,994,403	-0.028		
Mar-00	23	4,135,152,366,234	179,789,233,315	0.190		
Apr-00	19	3,174,694,525,687	167,089,185,562	-0.073		
May-00	22	2,649,273,207,318	120,421,509,424	-0.328		
Jun-00	22	2,883,513,997,781	131,068,818,081	0.085		
Jul-00	20	2,804,753,395,361	140,237,669,768	0.068		
Aug-00	23	2,720,788,395,832	118,295,147,645	-0.170		
Sep-00	20	2,930,188,809,012	146,509,440,451	0.214		
Oct-00	22	3,485,926,307,727	158,451,195,806	0.078		
Nov-00	21	2,795,778,876,887	133,132,327,471	-0.174		
Dec-00	20	2,809,917,349,851	140,495,867,493	0.054		
Jan-01	21	3,143,501,125,244	149,690,529,774	0.063		
Feb-01	19	2,372,420,523,286	124,864,238,068	-0.181		
Mar-01	22	2,554,419,085,113	116,109,958,414	-0.073		
Apr-01	20	2,324,349,507,745	116,217,475,387	0.001		
May-01	22	2,353,179,388,303	106,962,699,468	-0.083		
Jun-01	21	2,111,922,113,236	100,567,719,678	-0.062		
Jul-01	21	2,004,384,034,554	95,446,858,788	-0.052		
Aug-01	23	1,803,565,337,795	78,415,884,252	-0.197		
Sep-01	15	1,573,484,946,383	104,898,996,426	0.291		
Oct-01	23	2,147,238,873,044	93,358,211,871	-0.117		
Nov-01	21	1,939,427,217,518	92,353,677,025	-0.011		
Dec-01	20	1,921,098,738,113	96,054,936,906	0.039		
Jan-02	21	2,149,243,312,432	102,344,919,640	0.063		
Feb-02	19	1,928,830,595,585	101,517,399,768	-0.008		
Mar-02	20	2,002,216,374,514	100,110,818,726	-0.014		
Apr-02	22	2,062,101,866,506	93,731,903,023	-0.066		
May-02	22	1,985,859,756,557	90,266,352,571	-0.038		
Jun-02	20	1,882,185,380,609	94,109,269,030	0.042		
Jul-02	22	2,349,564,490,189	106,798,385,918	0.126		
Aug-02	22	1,793,429,904,079	81,519,541,095	-0.270		
Sep-02	20	1,518,944,367,204	75,947,218,360	-0.071		
Oct-02	23	2,127,874,947,972	92,516,302,086	0.197		
Nov-02	20	1,780,816,458,122	89,040,822,906	-0.038		
Dec-02	21	1,561,092,215,646	74,337,724,555	-0.180		
Jan-03	21	1,723,698,830,414	82,080,896,686	0.099		
Feb-03	19	1,411,722,405,357	74,301,179,229	-0.100		
Mar-03	21	1,699,581,267,718	80,932,441,320	0.085		
Apr-03	21	1,759,751,025,279	83,797,667,870	0.035		
May-03	21	1,871,390,985,678	89,113,856,461	0.062		
Jun-03	21	2,122,225,077,345	101,058,337,016	0.126		
Jul-03	22	2,100,812,973,956	95,491,498,816	-0.057		
Aug-03	21	1,766,527,686,224	84,120,366,011	-0.127		
Sep-03	21	2,063,584,421,939	98,265,924,854	0.155		
Oct-03	23	2,331,850,083,022	101,384,786,218	0.031		
Nov-03	19	1,903,726,129,859	100,196,112,098	-0.012		
Dec-03	22	2,066,530,151,383	93,933,188,699	-0.065		
Jan-04	20	2,390,942,905,678	119,547,145,284	0.241		
Feb-04	19	2,177,765,594,701	114,619,241,826	-0.042		
Mar-04	23	2,609,443,903,115	113,454,082,744	-0.010		
Apr-04	21	2,411,279,535,948	114,822,835,045	0.012		

May-04	20	2,253,135,847,669	112,656,792,383	-0.019		
Jun-04	22	2,106,449,803,404	95,747,718,337	-0.163		
Jul-04	21	2,203,895,014,681	104,947,381,651	0.092		
Aug-04	22	2,027,596,448,411	92,163,474,928	-0.130		
Sep-04	21	1,987,599,548,361	94,647,597,541	0.027		
Oct-04	21	2,407,510,364,975	114,643,350,713	0.192		
Nov-04	21	2,569,602,996,944	122,362,047,474	0.065		
Dec-04	22	2,665,399,229,376	121,154,510,426	-0.010		
Jan-05	20	2,568,659,427,333	128,432,971,367	0.058		
Feb-05	19				131,460,417,421	2,497,747,931,005
Mar-05	22				134,559,227,001	2,960,302,994,030
Apr-05	21				137,731,082,301	2,892,352,728,325
May-05	21				140,977,705,168	2,960,531,808,532
Jun-05	22				144,300,858,037	3,174,618,876,824
Jul-05	20				147,702,344,889	2,954,046,897,770
Aug-05	23				151,184,012,225	3,477,232,281,168
Sep-05	21				154,747,750,075	3,249,702,751,583

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51258; File No. SR–Amex–2005–001]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to the Adoption of Generic Listing Standards for Index-Linked Securities

February 25, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 6, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On February 25, 2005, Amex amended its 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 Exchange proposes to add section 107D to the Amex *Company Guide* for the purpose of adopting generic listing standards pursuant to Rule 19b–4(e) of the Act[4] in connection with index-linked securities (''Index Securities'').

The text of the proposed rule change, as amended, is set forth below. Proposed new language is in *italics;* proposed deletions are in brackets.

* * * * *

Amex *Company Guide*

Section 107 Other Securities

The Exchange will consider listing any security not otherwise covered by the criteria of sections 101 through 106, provided the issue is otherwise suited for auction market trading. Such issues will be evaluated for listing against the following criteria:

A–C. No Change

D. [Reserved] *Index-Linked Securities*

Index-linked securities are securities that provide for the payment at maturity of a cash amount based on the performance of an underlying index or indexes. Such securities may or may not provide for the repayment of the original principal investment amount. The Exchange may submit a rule filing pursuant to section 19(b)(2) of the Securities Exchange Act of 1934 to permit the listing and trading of index-linked securities that do not otherwise meet the standards set forth below in paragraphs (a) through (k). The Exchange will consider for listing and trading pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934, index-linked securities provided:

(a) Both the issue and the issuer of such security meet the criteria set forth above in ''General Criteria,'' except that the minimum public distribution shall be 1,000,000 units with a minimum of 400 public holders, except, if traded in thousand dollar denominations, then no minimum number of holders.

(b) The issue has a minimum term of one (1) year but not greater than ten (10) years.

(c) The issue must be the non-convertible debt of the issuer.

(d) The payment at maturity may or may not provide for a multiple of the positive performance of an underlying index or indexes; however, in no event will payment at maturity be based on a multiple of the negative performance of an underlying index or indexes.

(e) The issuer will be expected to have a minimum tangible net worth in excess of $250,000,000, and to otherwise substantially exceed the earnings requirements set forth in section 101(a) of the Company Guide. In the alternative, the issuer will be expected: (i) to have a minimum tangible net worth of $150,000,000 and to otherwise substantially exceed the earnings requirement set forth in section 101(a) of the Company Guide, and (ii) not to have issued securities where the original issue price of all the issuer's other index-linked note offerings (combined with index-linked note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.

(f) The issuer is in compliance with Rule 10A–3 under the Securities Exchange Act of 1934.

(g) Initial Listing Criteria—Each underlying index is required to have at least ten (10) component securities. In addition, the index or indexes to which the security is linked shall either (1) have been reviewed and approved for the trading of options or other derivatives by the Commission under section 19(b)(2) of the 1934 Act and rules thereunder and the conditions set forth in the Commission's approval order, including comprehensive surveillance sharing agreements for non-U.S. stocks, continue to be satisfied, or (2) the index or indexes meet the following criteria:

(i) Each component security has a minimum market value of at least $75

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amendment No. 1, dated February 25, 2005 (''Amendment No. 1''). In Amendment No. 1, the Exchange revised the proposed rule text and corresponding description. Amendment No. 1 replaced Amex's original filing in its entirety.

[4] 17 CFR 240.19b–4(e).

million, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the market value can be at least $50 million;

(ii) Each component security shall have trading volume in each of the last six months of not less than 1,000,000 shares, except that for each of the lowest weighted component securities in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume shall be at least 500,000 shares in each of the last six months;

(iii) In the case of a capitalization weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of component securities in the index, each have an average monthly trading volume of at least 2,000,000 shares over the previous six months;

(iv) No underlying component security will represent more than 25% of the weight of the index, and the five highest weighted component securities in the index do not in the aggregate account for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 component securities);

(v) 90% of the index's numerical value and at least 80% of the total number of component securities will meet the then current criteria for standardized option trading set forth in Exchange Rule 915;

(vi) Each component security shall be a 1934 Act reporting company which is listed on a national securities exchange or is traded through the facilities of a national securities system and is subject to last sale reporting; and

(vii) Foreign country securities or American Depository Receipts (''ADRs'') that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the index.

(h) Continued Listing Criteria—(1) The Exchange will commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject index-linked security), if any of the standards set forth above in paragraph (g) are not continuously maintained, except that:

(i) The criteria that no single component represent more than 25% of the weight of the index and the five highest weighted components in the index can not represent more than 50% (or 60% for indexes with less than 25 components) of the weight of the Index, need only be satisfied for capitalization weighted and price weighted indexes as of the first day of January and July in each year;

(ii) The total number of components in the index may not increase or decrease by more than 33⅓ percent from the number of components in the index at the time of its initial listing, and in no event may be less than ten (10) components;

(iii) The trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months; and

(iv) In a capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index have had an average monthly trading volume of at least 1,000,000 shares over the previous six months.

(2) In connection with an index-linked security that is listed pursuant to paragraph (g)(1) above, the Exchange will commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject index-linked security) if an underlying index or indexes fails to satisfy the maintenance standards or conditions for such index or indexes as set forth by the Commission in its order under section 19(b)(2) of the 1934 Act approving the index or indexes for the trading of options or other derivatives.

(3) The Exchange will also commence delisting or removal proceedings (unless the Commission has approved the continued trading of the subject index-linked security), under any of the following circumstances:

(i) If the aggregate market value or the principal amount of the securities publicly held is less than $400,000;

(ii) If the value of the index or composite value of the indexes is no longer calculated or widely disseminated on at least a 15-second basis; or

(iii) If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

(i) Index Methodology and Calculation—(i) Each index will be calculated based on either a capitalization, modified capitalization, price, equal-dollar or modified equal-dollar weighting methodology. (ii) Indexes based upon the equal-dollar or modified equal-dollar weighting method will be rebalanced at least quarterly. (iii) If the index is maintained by a broker-dealer, the broker-dealer shall erect a ''firewall'' around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer. (iv) The current value of an index will be widely disseminated at least every 15 seconds. (v) If the value of an index-linked security is based on more than one (1) index, then the composite value of such indexes must be widely disseminated at least every 15 seconds.

(j) Surveillance Procedures. The Exchange will implement written surveillance procedures for index-linked securities, including adequate comprehensive surveillance sharing agreements for non-U.S. securities, as applicable.

(k) Index-linked securities will be treated as equity instruments.

E. No Change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add new Section 107D to the Amex *Company Guide* to provide generic listing standards to permit the listing and trading of Index Securities pursuant to Rule 19b–4(e) under the Act.[5] Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4,[6] if the Commission has approved, pursuant to section 19(b) of the Act,[7] the self-regulatory

[5] 17 CFR 240.19b–4(e).

[6] 17 CFR 240.19b–4(c)(1).

[7] 15 U.S.C. 78s(b).

organization's trading rules, procedures and listing standards for the product class that would include the new derivatives securities product, and the self-regulatory organization has a surveillance program for the product class.[8]

The Commission has previously approved the listing and trading of several Index Securities by the Exchange based on a variety of debt structures and market indexes.[9] In approving these securities for Exchange trading, the Commission thoroughly considered the structures, their usefulness to investors and to the markets, and Amex rules that govern their trading. The Exchange believes that adopting generic listing standards for these securities and applying Rule 19b–4(e) should fulfill the intended objective of that Rule by allowing those Index Securities that satisfy the proposed generic listing standards to commence trading, without the need for the public comment period and Commission approval.[10] This has the potential to reduce the time frame for bringing Index Securities to market and thereby reducing the burdens on issuers and other market participants. The failure of a particular index to comply with the proposed generic listing standards under Rule 19b–4(e), however, would not preclude the Exchange from submitting a separate filing pursuant to section 19(b)(2), requesting Commission approval to list and trade a particular index-linked product.

Under section 107A of the Amex *Company Guide,* the Exchange may approve for listing and trading securities that cannot be readily categorized under the listing criteria for common and preferred securities, bonds, debentures, or warrants.[11] The Amex proposes in this rule filing to adopt generic listing standard for Index Securities under new Section 107D.[12] Index Securities are designed for investors who desire to participate in a specific market segment or combination of market segments through index products. Each Index Security is intended to provide investors with exposure to an identifiable underlying market index. Index Securities may or may not make interest payments to the holder during their term. Despite the fact that Index Securities are linked to an underlying index, each will trade as a single, exchange-listed security.

The Exchange proposes that generic listing standards appropriate for Index Securities provide that each index or combination of indexes (the ''Underlying Index'' or ''Underlying Indexes'') meet the criteria set forth in proposed section 107D(g) or be an index previously approved for the trading of options or other derivative securities by the Commission under section 19(b)(2) of the Act and rules thereunder. In all cases, an Underlying Index is required to have a minimum of ten (10) component securities. The specific criteria for each underlying component security in proposed section 107D(g) is set forth below in the section entitled ''Eligibility Standards for Underlying Component Securities.'' In general, the criteria for the underlying component securities of an Underlying Index is substantially similar to the requirements for index options set forth in Commentary .02 to Amex Rule 901C.

Description of Index-Linked Securities. Index Securities are the non-convertible debt of an issuer that have a term of at least one (1) year but not greater than ten (10) years. The issuer of an Index Security may or may not provide for periodic interest payments to holders based on dividends or other cash distributions paid on the securities comprising the Underlying Index or Indexes during a prescribed period.[13] The holder of an Index Security may or may not be fully exposed to the appreciation and/or depreciation of the underlying component securities. For example, an Index Security may be subject to a ''cap'' on the maximum principal amount to be repaid to holders or a ''floor'' on the minimum principal amount to be repaid to holders at maturity. A typical Index Security listed and traded on the Exchange provides for a payment amount in a multiple greater than one (1) times the positive index return or performance, subject to a maximum gain or cap.[14]

The proposed generic listing standards will not be applicable to Index Securities where the payment at maturity may be based on a multiple of negative performance of an underlying index or indexes. An Index Security may not provide for a minimum guaranteed amount to be repaid, *i.e.*, no ''principal protection.'' Other Index Securities provide for participation in the positive return or performance of an index with the added protection of receiving a payment guarantee of the issuance price or ''principal protection.'' Further iterations may also provide ''contingent'' protection of the principal amount, whereby the principal protection may disappear if the Underlying Index at any point in time during the life of such security reaches a certain pre-determined level.[15] The Exchange believes that the flexibility to list a variety of Index Securities will offer investors the opportunity to more precisely focus their specific investment strategies.

The original public offering price of Index Securities may vary with the most

[8] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (the ''19b–4(e) Order'').

[9] *See infra* notes 14, 15 and 19.

[10] The Exchange has previously received Commission approval to list and trade certain index options, exchange-traded fund shares and trust issued receipts pursuant to Rule 19b–4(e). *See* Securities Exchange Act Release Nos. 41091 (February 23, 1999), 64 FR 10515 (March 4, 1999) (Index Options); 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000) (ETFs); and 43396 (September 29, 2000), 65 FR 60230 (October 10, 2000) (TIRs).

[11] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8624 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[12] *See* Securities Exchange Act Release No. 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993) (first Commission order approving equity linked notes (''Original ELN Order'')). *See also* Securities Exchange Act Release Nos. 42582 (March 27, 2001), 65 FR 17685 (April 4, 2000) (permitting ELN on up to 20 securities) and 47055 (December 19, 2002), 67 FR 79669 (December 30, 2002) (increasing allowable ELN basket to 30 securities).

[13] Interest payments may be based on a fixed or floating rate.

[14] *See, e.g.*, Securities Exchange Act Release Nos. 50812 (December 7, 2004), 69 FR 74544 (December 14, 2004) (approving the listing and trading of Wachovia Notes linked to the performance of the Nasdaq-100); 50278 (August 26, 2004), 69 FR 53751 (September 2, 2004) (approving the listing and trading of Citigroup Notes linked to the performance of the S&P 500); 50019 (July 14, 2004), 69 FR 43635 (July 21, 2004) (approving the listing and trading of Morgan Stanley PLUS Notes linked to the performance of the S&P 500); 50016 (July 14, 2004), 69 FR 43639 (July 21, 2004) (approving the listing and trading of Morgan Stanley PLUS Notes linked to the performance of the Nikkei 225 Index); 48152 (July 10, 2003), 68 FR 42435 (July 17 2003) (approving the listing and trading of a UBS Partial Protection Note linked to the S&P 500); 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of a CSFB Accelerated Return Notes linked to S&P 500); 47911 (May 22, 2003), 68 FR 32558 (May 30, 2003) (approving the listing and trading of notes (Wachovia TEES) linked to the S&P 500); 46883 (November 21, 2002), 67 FR 71216 (November 29, 2002) (approving the listing and trading of Market Recovery Notes on the DJIA) and 45966 (May 20, 2002), 67 FR 36942 (May 28, 2002) (approving the listing and trading of notes linked to the performance of the Nasdaq 100).

[15] See, *e.g.*, Securities Exchange Act Release Nos. 50850 (December 14, 2004), 69 FR 76506 (December 21, 2004) (approving the listing and trading of Wachovia Trigger Capitals linked to the performance of the S&P 500); 50414 (September 20, 2004), 69 FR 58001 (September 28, 2004) (approving the listing and Trading of Lehman Contingent Protection Notes on the S&P 500); 49453 (March 19, 2004), 69 FR 15913 (March 26, 2004) (approving the listing and Trading of Contingent Principal Protection Notes linked to the performance of the DJIA); 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (approving the listing and trading of CSFB Contingent Principal Protection Notes linked to the performance of the S&P 500); and 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of a UBS Partial Protection Note linked to the performance of the S&P 500).

common offering price expected to be $10 or $1,000 per unit. As discussed above, Index Securities entitle the owner at maturity to receive a cash amount based upon the performance of a particular market index or combination of indexes. The structure of an Index Security may provide ''principal protection'' or provide that the principal amount is fully exposed to the performance of a market index. The Index Securities do not give the holder any right to receive a portfolio security, dividend payments, or any other ownership right or interest in the portfolio or index of securities comprising the Underlying Index. The current value of an Underlying Index or composite value of the Underlying Indexes will be widely disseminated at least every 15 seconds during the trading day.

Index Securities may or may not be structured [16] with accelerated returns, upside or downside, based on the performance of the Underlying Index. For example, an Index Security may provide for an accelerated return of 3-to-1 if the Underlying Index achieves a positive return at maturity. The Exchange submits that Index Securities are ''hybrid'' securities whose rates of return are largely the result of the performance of an Underlying Index or Indexes comprised of component securities. In connection with the listing and trading of Index Securities, the Exchange will issue an Information Circular to members detailing the special risks and characteristics of the securities. Accordingly, the particular structure and corresponding risk of any Index Security traded on the Exchange will be highlighted and disclosed.[17]

Index Securities are expected to trade at a lower cost than the cost of trading each of the underlying component securities separately (because of reduced commission and custody costs) and are also expected to give investors the ability to maintain index exposure without the corresponding management or administrative fees and ongoing expenses. The initial offering price for an Index Security will be established on the date the security is priced for sale to the public. The final value of an Index Security will be determined on the valuation date at or near maturity consistent with the mechanics detailed in the prospectus for such Index Security.

Eligibility Standards for Issuers. The following standards are proposed for each issuer of Index Securities:

(A) *Assets/Equity*—The issuer shall have assets in excess of $100 million and stockholders' equity of at least $10 million. In the case of an issuer that is unable to satisfy the earnings criteria set forth in Section 101 of the Amex *Company Guide*, the Exchange generally will require the issuer to have the following: (i) assets in excess of $200 million and stockholders' equity of at least $10 million; or (ii) assets in excess of $100 million and stockholders' equity of at least $20 million.

(B) *Distribution*—Minimum public distribution of 1,000,000 notes with a minimum of 400 public shareholders, except, if traded in thousand dollar denominations, then no minimum number of holders.

(C) *Principal Amount/Aggregate Market Value*—Not less than $4 million.

(D) *Term*—The issue has a minimum of one (1) year but not greater than ten (10) years.

(E) *Tangible Net Worth*—The issuer will be expected to have a minimum tangible net worth [18] in excess of $250,000,000 and to otherwise substantially exceed the earnings requirements set forth in section 101 of the Amex *Company Guide*. In the alternative, the issuer will be expected: (i) to have a minimum tangible net worth of $150,000,000 and to otherwise substantially exceed the earnings requirement set forth in section 101 of the Amex *Company Guide*, and (ii) not to have issued securities where the original issue price of all the issuer's other index-linked note offerings (combined with index-linked note offerings of the issuer's affiliates) listed on a national securities exchange or traded through the facilities of Nasdaq exceeds 25% of the issuer's net worth.

Description of Underlying Indexes. Each Underlying Index will either be (i) an index meeting the specific criteria set forth below in proposed Amex *Company Guide* section 107D(g) that is similar to current Amex Rule Commentary .02 to Rule 901C; or (ii) an index approved for the trading of options or other derivatives securities by the Commission under section 19(b)(2) of the Act and rules thereunder. However, in all cases, an Underlying Index must contain at least ten (10) component securities.

Examples of Underlying Indexes intended to be covered under the proposed generic listing standards include the Standard & Poor's 500 Index (''S&P 500''), Nasdaq-100 Index (''Nasdaq 100''), the Dow Jones Industrial Average (''DJIA''), Nikkei 225 Index (''Nikkei 225''), the Dow Jones STOXX 50 Index (''DJ STOXX 50''), the Global Titans 50 Index (''Global Titans 50''), Amex Biotechnology Index (''Amex Biotech''), and certain other indexes that represent various industry and/or market segments.[19] The Exchange will require that all changes to an Underlying Index, including the deletion and addition of underlying component securities, index rebalancings and changes to the calculation of the index, will be made in accordance with the proposed generic criteria or the Commission's section 19(b)(2) order, which approved the similar derivative product containing the Underlying Index.

In order to satisfy the proposed generic listing standards, the Underlying Index will be calculated based on either a market capitalization,[20] modified market

[16] See, *e.g.*, Securities Exchange Act Release Nos. 48280 (August 1, 2003), 68 FR 47121 (August 7, 2003). As stated, the proposed generic listing standards will not be applicable to Index Securities that are structured with ''downside'' accelerated returns.

[17] The Exchange notes that members conducting a public securities business are subject to the rules and regulations of the NASD, including NASD Rule 2310(a) and (b). Accordingly, NASD Notice to Members 03–71 regarding non-conventional investments or ''NCIs'' applies to Exchange members recommending/selling index-linked securities to public customers. This Notice specifically reminds members in connection with NCIs (such as index-linked securities) of their obligations to: (1) Conduct adequate due diligence to understand the features of the product; (2) perform a reasonable-basis suitability analysis; (3) perform customer-specific suitability analysis in connection with any recommended transactions; (4) provide a balanced disclosure of both the risks and rewards associated with the particular product, especially when selling to retail investors; (5) implement appropriate internal controls; and (6) train registered persons regarding the features, risk and suitability of these products.

[18] ''Tangible net worth'' is defined as total assets less intangible assets and total liabilities. Intangibles include non-material benefits such as goodwill, patents, copyrights and trademarks.

[19] *See supra* notes 14, 15. *See also* Securities Exchange Act Release Nos. 49548 (April 9, 2004), 69 FR 20089 (April 15, 2004) (approving the listing and trading of notes linked to the performance of the Select Utility Index); 48151 (July 10, 2003), 68 FR 42438 (July 17, 2003) (approving the listing and trading of notes linked to the performance of the Amex Biotechnology Index); 46882 (November 21, 2002), 67 FR 71219 (November 29, 2002) (approving the listing and trading of notes linked to the performance of the Select Fifty Index); 45305 (January 17, 2002), 67 FR 3753 (January 25, 2002) (approving the listing and trading of notes linked to the performance of the Biotech-Pharmaceutical Index); 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (Select Ten Index); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of notes linked to the performance of the Industrial 15 Index); and 46021 (June 3, 2002), 67 FR 39753 (June 10, 2002) (approving the listing and trading of notes linked to the performance of the Select European 50 Index).

[20] A ''market capitalization'' index is the most common type of stock index. The components are weighted according to the total market value of the outstanding shares, *i.e.*, share price times the

Continued

capitalization,[21] price,[22] equal-dollar [23] or modified equal-dollar [24] weighting methodology. If a broker-dealer is responsible for maintaining (or has a role in maintaining) the Underlying Index, such broker-dealer is required to erect and maintain a ''firewall,'' in a form satisfactory to the Exchange, to prevent the flow of information regarding the Underlying Index from the index production personnel to the sales and trading personnel.[25] In addition, an Underlying Index that is maintained by a broker-dealer is also required to be calculated by an independent third party who is not a broker-dealer.

Eligibility Standards for Underlying Securities. Index Securities will be subject to the criteria in proposed Amex *Company Guide* section 107D(g) and (h) for initial and continued listing. For an Underlying Index to be appropriate for the initial listing of an Index Security, such Index must either be approved for the trading of options or other derivative securities by the Commission under section 19(b)(2) of the Act and rules thereunder or meet the following requirements:

- A minimum market value of at least $75 million, except that for each of the lowest weighted Underlying Securities in the index that in the aggregate account for no more than 10% of the weight of the index, the market value can be at least $50 million;
- Trading volume in each of the last six months of not less than 1,000,000 shares, except that for each of the lowest weighted Underlying Securities in the index that in the aggregate account for no more than 10% of the weight of the index, the trading volume shall be at least 500,000 shares in each of the last six months;
- In the case of a capitalization-weighted index, the lesser of the five highest weight Underlying Securities in the index or the highest weighted Underlying Securities in the index that in the aggregate represent at least 30% of the total number of Underlying Securities in the index, each have an average monthly trading volume of at least 2,000,000 shares over the previous six months;
- No component security will represent more than 25% of the weight of the index, and the five highest weighted component securities in the index will not in the aggregate account for more than 50% of the weight of the index (60% for an index consisting of fewer than 25 Underlying Securities);
- 90% of the index's numerical index value and at least 80% of the total number of component securities will meet the then current criteria for standardized options trading set forth in Exchange Rule 915;
- Each component security shall be a 1934 Act reporting company which is listed on a national securities exchange or is traded through the facilities of a national securities system and is subject to last sale reporting; and
- Foreign country securities or American Depository Receipts (''ADRs'') that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 20% of the weight of the index.

As described above in the section entitled ''Description of Underlying Indexes,'' all Underlying Indexes are required to have at least ten (10) component securities.

The proposed continued listing criteria set forth in proposed Amex *Company Guide* section 107D(h)(1) regarding the underlying components of an Underlying Index provides that the Exchange will commence delisting or removal proceedings of an Index Security (unless the Commission has approved the continued trading of the Index Security) if any of the standards set forth in the initial eligibility criteria of proposed Amex *Company Guide* section 107D(g) are not continuously maintained, except that:

- The criteria that no single component represent more than 25% of the weight of the index and the five highest weighted components in the index can not represent more than 50% (or 60% for indexes with less than 25 components) of the weight of the Index, need only be satisfied for capitalization weighted and price weighted indexes as of the first day of January and July in each year;
- The total number of components in the index may not increase or decrease by more than 33⅓% from the number of components in the index at the time of its initial listing, and in no event may be less than ten (10) components;
- The trading volume of each component security in the index must be at least 500,000 shares for each of the last six months, except that for each of the lowest weighted components in the index that in the aggregate account for no more than 10% of the weight of the index, trading volume must be at least 400,000 shares for each of the last six months; and
- In a capitalization-weighted index, the lesser of the five highest weighted component securities in the index or the highest weighted component securities in the index that in the aggregate represent at least 30% of the total number of stocks in the index have had an average monthly trading volume of at least 1,000,000 shares over the previous six months.

In connection with an Index Security that is listed pursuant to proposed Amex *Company Guide* section 107D(g)(1), the Exchange will commence delisting or removal proceedings (unless the Commission has approved the continued trading of the Index Security) if an underlying index or indexes fails to satisfy the maintenance standards or conditions for such index or indexes as set forth by the Commission in its order under section 19(b)(2) of the Act approving the index or indexes for the trading of options or other derivatives.

As set forth in proposed Amex *Company Guide* section 107D(h)(3), the Exchange will also commence delisting or removal proceedings of an Index Security (unless the Commission has approved the continued trading of the Index Security), under any of the following circumstances:

number of shares outstanding. This type of index will fluctuate in line with the price moves of the component stocks.

[21] A ''modified market capitalization'' index is similar to the market capitalization index, except that an adjustment to the weights of one or more of the components occurs. This is typically done to avoid having an index that has one or a few stocks representing a disproportionate amount of the index value.

[22] A ''price weighted'' index is an index in which the component stocks are weighted by their share price. The most common example is the DJIA.

[23] An ''equal dollar weighted'' index is an index structured so that share quantities for each of the component stocks in the index are determined as if one were buying an equal dollar amount of each stock in the index. Equal dollar weighted indexes are usually rebalanced to equal weightings either quarterly, semi-annually, or annually.

[24] A ''modified equal-dollar weighted'' index is designed to be a fair measurement of the particular industry or sector represented by the index, without assigning an excessive weight to one or more index components that have a large market capitalization relative to the other index components. In this type of index, each component is assigned a weight that takes into account the relative market capitalization of the securities comprising the index. The index is subsequently rebalanced to maintain these pre-established weighting levels. Like equal-dollar weighted indexes, the value of a modified equal-dollar weighted index will equal the current combined market value of the assigned number of shares of each of the underlying components divided by the appropriate index divisor. A modified equal-dollar weighted index will typically be re-balanced quarterly.

[25] For certain indexes, an index provider, such as Dow Jones, may select the components and calculate the index, but overseas broker-dealer affiliates of U.S. registered broker-dealers may sit on an ''advisory'' committee that recommends component selections to the index provider. In such case, the Exchange should ensure that appropriate information barriers and insider trading policies exist for this advisory committee. *See* Securities Exchange Act Release No. 50501 (October 7, 2004), 69 FR 61533 (October 19, 2004) (approving NASD 2004–138, pertaining to index linked notes on the Dow Jones Euro Stoxx 50 Index). Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on February 23, 2005.

• If the aggregate market value or the principal amount of the securities publicly held is less than $400,000;

• If the value of the Underlying Index or composite value of the Underlying Indexes is no longer calculated and widely disseminated on at least a 15-second basis; or

• If such other event shall occur or condition exists which is the opinion of the Exchange makes further dealings on the Exchange inadvisable.

The Amex represents that Index Securities listed and traded on the Exchange will be required to be in compliance with Rule 10A–3 under the Act.[26]

Exchange Rules Applicable to Index-Linked Securities. Index Securities will be treated as equity instruments and will be subject to all Exchange rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, market volatility related trading halt provisions pursuant to Amex Rule 117, and responsibilities of the specialist. Exchange equity margin rules and the regular equity trading hours of 9:30 a.m. to 4 p.m. will apply to transactions in Index Securities.

In addition, the Exchange will evaluate the nature and complexity of each Index Security and, if appropriate, distribute a circular to the membership, prior to the commencement of trading, providing guidance with respect to, among other things, member firm compliance responsibilities when handling transactions in Index Securities and highlighting the special risks and characteristics. Specifically, the circular, among other things, will discuss and emphasize the structure and operation of the Index Security, the requirement that members and member firms deliver a prospectus to investors purchasing an Index Security prior to or concurrently with the confirmation of a transaction, applicable Amex rules, dissemination information regarding the Underlying Index, trading information and applicable suitability rules.

In particular, the circular will set forth the Exchange's suitability rule that requires member and member organizations and employees thereof recommending a transaction in Index Securities: (1) To determine that such transaction is suitable for the customer (Amex Rule 411) and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction.

The Exchange will closely monitor activity in Index Securities to identify and deter any potential improper trading activity in Index Securities. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of Index Securities. Specifically, the Amex will rely on its existing surveillance procedures governing equities, options and exchange-traded funds, which have been deemed adequate under the Act. The Exchange has developed procedures to closely monitor activity in the Index Security and related Underlying Securities to identify and deter potential improper trading activity. Proposed Amex *Company Guide* section 107D(j) provides that the Exchange will implement written surveillance procedures for Index Securities.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. As detailed above in the description of the generic standards, if the issuer or a broker-dealer is responsible for maintaining (or has a role in maintaining) the Underlying Index, such issuer or broker-dealer is required to erect and maintain a ''firewall'' in a form satisfactory to the Exchange, in order to prevent the flow of information regarding the Underlying Index from the index production personnel to sales and trading personnel. In addition, the Exchange will require that calculation of Underlying Indexes be performed by an independent third party who is not a broker-dealer.

The Exchange submits that several Index Securities based on both broad-based and market segment indexes are currently trading on the Exchange.[27] Each of these products separately received approval for trading by the Commission. Amex believes that the proposed generic listing standards for Index Securities will serve to streamline and increase the efficiency of listing index-linked products on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[28] in general and furthers the objective of section 6(b)(5)[29] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principal of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive any written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

[26] *See* Rule 10A–3(c)(7), 17 CFR 240.10A–3(c)(7).

[27] *See, e.g.*, Securities Exchange Act Release Nos. 48151 (July 10, 2003), 68 FR 42438 (July 17, 2003) (approving the listing and trading of notes linked to the Amex Biotech Index); 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of a CSFB Note linked to S&P 500); 47911 (May 22, 2003), 68 FR 32558 (May 30, 2003) (approving the listing and trading of notes linked to the S&P 500); 46021 (June 3, 2002), 67 FR 39753 (June 10, 2002) (approving the listing and trading of notes linked to the Select European 50 Index); 45639 (March 25, 2002), 67 FR 15258 (March 29, 2002) (approving the listing and trading of notes linked to the Oil Natural Gas Index); 45305 (January 17, 2002), 67 FR 3753 (January 25, 2002) (approving the listing and trading of notes linked to the Biotech-Pharmaceutical Index); 44437 (June 18, 2001), 66 FR 33585 (June 22, 2001) (approving the listing and trading of notes linked to the Industrial 15 Index); and 44342 (May 23, 2001), 66 FR 29613 (May 31, 2001) (approving the listing and trading of notes linked to the Select Ten Index). *See also supra* notes 13, 14 and 18.

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5)

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–2005–001 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–2005–001. 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 available publicly. All submissions should refer to File Number SR–Amex–2005–001 and should be submitted on or before March 25, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

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[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51269; File No. SR–Amex–2005–025]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Fees for Transactions in Options on the Nasdaq 100 Index (NDX) and Mini-Nasdaq 100 Index (MNX)

February 28, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 23, 2005, 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. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its Options Fee Schedule by increasing the per-contract license fee in connection with transactions by specialists and registered options traders (''ROTs'') in options on the Nasdaq 100 Index (''NDX'') and the reduced-value Nasdaq 100 Index (''MNX''). The text of the proposed rule change is available on Amex's Web site (*http://www.amex.com*), at the Amex's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has entered into numerous agreements with index providers for the purpose of trading index options. The requirement to pay an index license fee to such third parties is a condition to the listing and trading of these index options. In many cases, the Exchange is required to pay a significant licensing fee to issuers or index owners that may not be reimbursed. In an effort to recoup the costs associated with index licenses, the Exchange has previously established a per-contract licensing fee for specialists and ROTs that is collected on every transaction in designated products in which a specialist or ROT is a party. The licensing fees currently imposed on specialists and ROTs are set forth in the Exchange's Options Fee Schedule.

The current license fee charged to specialists and ROTs trading NDX and MNX options is $0.10 per contract side. As a result of a recent change to the licensing agreement for NDX and MNX, the Exchange is now being charged a higher license fee. Accordingly, the Exchange now proposes to charge $0.15 per contract side for NDX and MNX options.

The purpose of the proposed fee is for the Exchange to recoup its costs in connection with the index license fee for the trading of NDX and MNX options. The proposed license fee will be collected on every transaction in NDX or MNX options in which a specialist or ROT is a party. Accordingly, the Exchange believes that requiring the payment of a per-contract licensing fee by those specialists and ROTs that are the beneficiaries of the Exchange's index license agreements is justified and is consistent with the rules of the Exchange. The Exchange believes that passing the license fee (on a per-contract basis) along to the specialists allocated to NDX and MNX and the ROTs trading such products is efficient and consistent with the intent of the Exchange to pass on its non-reimbursed costs to those market participants that are the beneficiaries of such license agreements.

The Exchange notes that it has recently increased a number of member fees to better align Exchange fees with the actual cost of delivering services and

[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)(2).

reduce Exchange subsidies of such services.[5] Implementation of this proposal is consistent with the reduction and/or elimination of these subsidies.

The Exchange submits that the proposed license fee will provide the Exchange with additional revenue and allow the Exchange to recoup its costs associated with the trading of NDX and MNX options. Furthermore, the Amex believes that this fee will help to allocate to those specialists and ROTs transacting in NDX and MNX options a fair share of the related costs of offering such options. Accordingly, the Exchange believes that the proposed fee is reasonable.

2. Statutory Basis

The Exchange believes that the proposed fee change is consistent with Section 6(b) of the Act,[6] in general, and Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among exchange members and other persons using exchange facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received by the Exchange with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective immediately pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(2) thereunder,[9] in that it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the 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–Amex–2005–025 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–2005–025. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–025 and should be submitted on or before March 25, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

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[5] *See* Securities Exchange Act Release Nos. 51070 (January 21, 2005), 70 FR 4900 (January 31, 2005) (relating to options transaction fees in connection with the Standard & Poor's Depository Receipts); 45360 (January 29, 2002), 67 FR 5626 (February 6, 2002) (order approving a rule change relating to a retroactive increase in floor, membership, and options trading fees, including licensing fees); and 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001) (relating to fees imposed on members and member organizations, including member fees, floor fees, booth rental fees, and membership registration fees).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(A)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51250; File No. SR–Amex–2005–021]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amending Section 507 of the Amex Company Guide To Conform the Definition of a ''Large'' Dividend to the Threshold Specified in Section 521 of the Company Guide

February 24, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 11, 2005, the American Stock Exchange LLC (''Exchange'' or ''Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex seeks to revise Section 507 of the Company Guide to conform the definition of a ''large'' dividend to the threshold specified in Section 521 of the Company Guide.

The text of the proposed rule change is available on the Amex's Web site *http://www.amex.com*, at the Amex's Office of the Secretary, and at the Commission's Public Reference Room.

[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).

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 Amex 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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 521 of the Company Guide specifies the procedures applicable to special ex-dividend rulings by the Exchange, and subsection (b) specifically relates to large or valuable dividends, dividends ''not in kind'' (*e.g.*, paid in the stock of another issuer) and split-ups effected as stock distributions. Under any of these circumstances Section 521 provides that the ''ex-dividend'' or ''ex-distribution'' date will be postponed until the dividend has been paid. Ordinarily, when an issuer declares a dividend, the Exchange quotes the stock ''ex-dividend'' beginning on the second business day preceding the record date for payment of the dividend, which has the effect that the buyer of the security is not entitled to the dividend. This is because the transaction will clear after the record date for payment and the buyer will thus not be the holder of record on the record date. Once a security is quoted ''ex-dividend,'' certain open orders, and the resulting market and collateral value of the security, are reduced in accordance with Amex Rule 132.[5]

However, in the case of large or valuable dividends, as well as dividends ''not in kind'' and split-ups effected as stock distributions, Section 521 of the Company Guide provides for special procedures such that the ''ex'' date will be postponed until the dividend or distribution has been made, and neither open orders, nor the market and collateral value of the security, are reduced. Instead, the security in question trades with a ''due bill'' attached meaning that the seller is obligated to pay the dividend or distribution to the purchaser. The reason for this difference is that otherwise the price of orders for the security, and its collateral value, would be significantly reduced by the value of the dividend or distribution, which could require shareholders to provide additional collateral. Section 521 specifies that usually a dividend of 20% or more is considered a ''large'' dividend for purposes of these special procedures.

Section 507 of the Company Guide specifies that if a company chooses to compute the cash payment on the dividend declaration date or if the ''ex'' date is postponed pursuant to Section 521 for a large dividend, then the applicable last sale price must be adjusted for the value of the dividend. However, Section 507 is inconsistent with Section 521 and incorrectly specifies a 25% dividend as constituting a ''large'' dividend.

Accordingly, the Amex is proposing to amend Section 507 of the Amex Company Guide to conform to Section 521 of the Company Guide.[6]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[7] in general and furthers the objectives of Section 6(b)(1)[8] in particular, in that it is designed to enforce compliance by Exchange members and persons associated with its members with the rules of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received by the Exchange on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective[9] pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Amex has asked that the Commission waive the 30-day operative delay specified in 19b–4(f)(6)(iii) under the Act.[12] The Commission believes such waiver is consistent with the protection of investors and the public interest, in that it will allow for the expeditious and accurate publication of the Exchange's rules. The Commission has therefore determined to waive the 30-day delay, rendering the proposal operative immediately.[13]

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–Amex–2005–021 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–2005–021. This file

[5] Telephone conversation between Laura Clare, Assistant General Counsel, the Amex, and Natasha Cowen, Attorney, Division of Market Regulation, Commission, on February 18, 2005.

[6] Specifically, the proposed rule change would amend the text of Section 507 by replacing the phrase ''large stock dividends of 25% or more'' with the phrase ''large stock dividends of usually 20% or more'' and similarly replacing the phrase ''large stock dividends (25% or more)'' with the phrase ''large stock dividends (usually 20% or more)''. *See* Exhibit 5 of the proposed rule change.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(1).

[9] The Exchange provided the Commission with notice of its intent to file the proposed rule change at least five days prior to the filing date.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the operative date of this proposal, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 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. Copies of such filing also will be available for inspection and copying at the principal offices of 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 available publicly. All submissions should refer to File Number SR–Amex–2005–021 and should be submitted on or before March 25, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–879 Filed 3–3–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51275; File No. SR–Amex–2005–002]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Member Firm Guarantee

February 28, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 4, 2005, 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 and II below, which Items have been prepared by the Exchange. On February 15, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .02 to Amex Rules 950(d) and 950(d)—ANTE to change the current member firm guarantee for equity and index options traded on the Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.amex.com*), at the Amex's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise the current participation or member firm guarantee for equity and index options traded on the Exchange. The member firm guarantee provides that a floor broker is entitled to a participation guarantee of 20% if the order is traded at the best bid or offer (''BBO'') or 40% if the order is traded at a price that improves the market, *i.e.*, at a price between the BBO (''20/40 Rule''). Amex is proposing to amend Commentary .02 to Amex Rules 950(d) and 950(d)—ANTE to revise the current 20/40 Rule so that floor brokers receive 40% of an order (after public customer orders on the specialist's book or represented by a floor broker in the crowd have been filled) if such order trades at a price that matches or improves the market.

In April 2003,[4] the Exchange received permanent approval of the pilot program relating to the member firm guarantee initially approved by the Commission on June 2, 2000.[5] Commentary .02(d) to Amex Rules 950(d) and 950(d)—ANTE permits facilitation cross transactions in equity options and sets forth the member firm guarantee percentages.[6] The member firm guarantee was subsequently extended to index options in September 2004.[7] In this proposed rule change, the Exchange also proposes that the member firm guarantee in ANTE extend to index options.

Amex Rules 950(d) and 950(d)—ANTE provide, under certain conditions, the ability to cross a specified percentage of the customer order on behalf of a member firm before specialists and/or registered options traders in the crowd can participate in the transaction, *i.e.*, the member firm guarantee. The provision generally applies to orders of 400 contracts or more; however, the Exchange is permitted to establish smaller eligible order sizes, on a class-by-class basis, provided that size is not for fewer than 50 contracts.

The amount of the guaranteed participation percentage depends upon a comparison of the original market quoted by the trading crowd in response to a request from the floor broker and the price at which the order is traded. If the order is traded at the best bid or offer provided by the trading crowd in response to the floor broker's initial request for a market, then the floor broker is entitled to cross 20% of the order. If the order is traded at a price that improves the market provided by the trading crowd in response to the floor broker's initial request for a market, then the floor broker is entitled to cross 40% of the order. In addition, the facilitating member firm may only participate in the executed contracts

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 dated February 15, 2005 (''Amendment No. 1''). In Amendment No. 1, the Exchange made clarifications and technical corrections to the proposal and proposed rule text, which have been incorporated into this notice and order.

[4] *See* Securities Exchange Act Release No. 47643 (April 7, 2003), 68 FR 17970 (April 14, 2003) (approving File No. SR–Amex–2000–49).

[5] *See* Securities Exchange Act Release No. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000) (approving File No. SR–Amex–99–36).

[6] Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that order with a contra side order from the firm's proprietary account.

[7] *See* Securities Exchange Act Release No. 50326 (September 7, 2004), 69 FR 55479 (September 14, 2004) (approving File No. SR–Amex–2004–51).

after public customer orders on the specialist's book or represented by a floor broker in the crowd have been filled.

Under the proposal, floor brokers would be entitled to cross 40% of an order provided the order trades at a price that matches or improves upon the price given by the trading crowd in response to the floor broker's initial request for a market. All other requirements set forth in Commentary .02 to Amex Rules 950(d) and 950(d)—ANTE would remain the same. The Exchange proposes to amend Commentary .02(d) to Amex Rules 950(d) and 950(d)—ANTE by deleting the 20/40 Rule and specifying that a floor broker would be entitled to cross 40% of the contracts remaining after public customer orders on the specialist's book or represented in the trading crowd have been satisfied, provided the order trades at or between the best bid or offer given by the trading crowd in response to the broker's initial request for a market. The procedures for facilitating orders would remain the same with the only change being to the size of the member firm guarantee from 20% to 40%.

Current Commentary .02(d) to Amex Rule 950(d) entitles the specialist to a participation entitlement of 20% of the original order size when the floor broker crosses its 20% at the trading crowd's price. If the floor broker improves upon the crowd's price and takes its 40%, the specialist is not entitled to any participation guarantee. The Exchange retains this limitation (*i.e.*, that the percentage of the specialist's entitlement when combined with the amount of the order the floor broker crosses may not exceed 40%), recognizing that in most instances the effect of the proposed rule change would be that specialists are not entitled to participation guarantees (because the member firm typically would take its 40% guaranteed amount). The rule text has been revised to clearly indicate this limitation.

In order to remain competitive with other options exchanges, Amex believes that a change from the 20/40 Rule to a 40% member firm guarantee is necessary. In recent months both the Chicago Board Options Exchange, Inc. and the Pacific Exchange, Inc. have implemented a 40% member firm guarantee. In addition, the International Securities Exchange, Inc. (''ISE'') permits a 40% facilitation guarantee to its Electronic Access Members for those orders submitted through the ISE's Facilitation Mechanism. Accordingly, the Exchange asserts that this proposal is required to remain competitive.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[8] in general, and furthers the objectives of Section 6(b)(5) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. 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–2005–002 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–2005–002. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Amex–2005–002 and should be submitted on or before March 25, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, 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.[10] Specifically, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that an exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the increase in the percentage that the floor broker is entitled to facilitate at the quoted market would not exceed 40% of an order. The Commission has found with respect to participation guarantees in other contexts that a maximum guarantee of 40% is not inconsistent with statutory standards of competition and free and open markets.[12]

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] *See, e.g.*, Securities Exchange Act Release Nos. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) at 11398; and 43100 (July 31, 2000), 65 FR 48778 (August 9, 2000) at notes 96–99 and accompanying text.

The Commission finds good cause for approving this proposed rule change, as amended, prior to the thirtieth day after publication of notice thereof in the **Federal Register**, pursuant to Section 19(b)(2) of the Act.[13] The Commission believes that the proposed rule change is generally consistent with rules in place at other exchanges, and that acceleration of the proposed rule change, as amended, will permit the Exchange to implement the proposal in an expeditious manner and to compete with other exchanges that have similar rules without delay. The Commission, therefore, believes it is consistent with Sections 6(b)(5)[14] and 19(b)(2)[15] of the Act to approve the Amex's proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–Amex–2005–002), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–898 Filed 3–3–05; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78s(b)(2).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(2).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51260; File No. SR–CBOE–2005–02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Exchange Fees for Reduced-Value Options on the Russell 2000 Index

February 25, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 3, 2005, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its Fee Schedule to establish fees for reduced-value options on the Russell 2000 Index. The text of the proposed rule change is available on CBOE's Web site (*http://www.cboe.com*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has submitted to the Commission a proposal to list for trading options that are based on one-fifth and one-tenth the value of the Russell 2000 Index (''Reduced-Value Options'').[5] The Exchange proposes to amend its Fee Schedule to establish fees for the Reduced-Value Options by setting the fees equal to the fees that are currently assessed by the Exchange for options on exchange-traded funds (''ETFs'').

Specifically, the Exchange proposes to assess public customers a transaction fee of $0.15 for transactions in the Reduced-Value Options, which is equivalent to what public customers are assessed for transactions in ETFs and Holding Company Depositary Receipts (''HOLDRS'') options.[6] Thus, public customer transaction fees for the Reduced-Value Options will be lower than the public customer transaction fees for the full-value Russell 2000 Index options (''RUT'').[7]

All other fees for the Reduced-Value Options will also be the same as the fees currently assessed for ETF options. Market-maker and DPM transaction fees will be $0.24 and member firm proprietary transaction fees will be $0.20 for facilitation of customer orders and $0.24 for non-facilitation orders. Linkage and broker-dealer transaction fees will be $0.45 if the premium is greater than or equal to $1 and $0.25 if the premium is less than $1.[8] Non-member market-maker transaction fees will be $0.47 if the premium is greater than or equal to $1 and $0.27 if the premium is less than $1. The floor brokerage fee will be $0.04 and $0.02 for crossed orders.

The RAES Access Fee will not apply as the Reduced-Value Options will trade on the Exchange's Hybrid Trading System. Also, the $0.40 RUT DPM and Market-Maker License Fee will not apply as that fee is only applicable to DPM and Market-Maker transactions in the full-value Russell 2000 Index (RUT) options. The $0.22 marketing fee will not apply as that fee is not applied to index option transactions.

The effect of this proposed rule change is to establish public customer transaction fees for the Reduced-Value Options that are lower than the public customer transaction fees for RUT options.[9] The Exchange believes the proposed rule change will further the Exchange's goal of making trading in Russell 2000 index options accessible to a greater range of investors.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(4) of the Act[11] in particular, in that it is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* File No. SR–CBOE–2004–89.

[6] Public customer transaction fees for options on ETFs and HOLDRS were reduced to $0.15 effective October 1, 2004. *See* Securities Exchange Act Release No. 50469 (September 29, 2004), 69 FR 59628 (October 5, 2004) (''ETF and HOLDRS fee filing'').

[7] Public customer transaction fees for RUT options are $0.45 if the premium is greater than or equal to $1 and $0.25 if the premium is less than $1.

[8] The Exchange is also making a clarifying change to the Fee Schedule to make clear that broker-dealer transaction fees for options on ETFs and HOLDRS are not equal to the customer transaction fees. Only public customers pay a transaction fee of $.15 for ETF and HOLDRS options. *See* ETF and HOLDRS fee filing, *supra* note 6.

[9] Except for public customer transaction fees and the RUT DPM and Market-Maker License Fee, all fees for RUT options are the same as the fees that are applicable to options on ETFs.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members and other persons using its facilities.

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 that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13] The Exchange represents that the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. 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 the filing of the proposed rule change as required by Rule 19b–4(f)(6). The Exchange has requested that the Commission waive the 30-day operative delay period for ''non-controversial'' proposals and make the proposed rule change effective and operative upon filing.

The Commission has determined to waive the 30-day operative delay period.[14] The effect of the proposal would be to establish public customer transaction fees for the Reduced-Value Options that are lower than the public customer transaction fees for full-value Russell 2000 Index options. For this reason, the Commission sees no reason to delay the operation of the proposed change. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2005–02 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–2005–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–02 and should be submitted on or before March 25, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–874 Filed 3–3–05; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 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. *See* 15 U.S.C. 78c(f).

[15] *See* 15 U.S.C. 78s(b)(3)(C).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51271; File No. SR–CBOE–2004–45]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 2 and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3 and 5 by the Chicago Board Options Exchange, Inc. Relating to the Trading of Complex Orders on the CBOE Hybrid System

February 28, 2005.

I. Introduction

On July 16, 2004, the Chicago Board Options, Inc. (''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to create a complex order book (''COB'') for certain complex orders traded on the CBOE Hybrid System (''Hybrid''). On November 8, 2004, the CBOE filed and withdrew Amendment No. 1 to the proposal and filed Amendment No. 2 to the proposal.[3] The CBOE filed Amendment No. 3 to the proposal on January 31, 2005.[4] The CBOE filed Amendment No. 4 to the proposal on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 2 supersedes and replaces the original filing in its entirety.

[4] Amendment No. 3 revises the proposal to add Interpretation and Policy .01 to CBOE Rule 6.53C. Interpretation and Policy .01 states that conversions and reversals are not eligible for routing to the COB, and that the CBOE will file any changes to Interpretation and Policy .01 with the Commission pursuant to section 19(b)(3)(A) of the Act.

[5] Amendment No. 5 adds Interpretation and Policy .02 to CBOE Rule 6.53C. Interpretation and Policy .02 states that until May 27, 2005, the N-second group timer, as described in CBOE Rule 6.45A(c), for complex order transactions will be set at zero seconds. Effective May 30, 2005, the N-second timer for complex order transactions will be set at the same length for complex order transactions and for transactions that do not involve complex orders.

February 4, 2005, and withdrew Amendment No. 4 on February 10, 2005. The CBOE filed Amendment No. 5 to the proposal on February 11, 2005.[5]

The proposed rule change and Amendment No. 2 were published for comment in the **Federal Register** on November 23, 2004.[6] The Commission received one comment letter regarding the proposal.[7] The CBOE responded to the comment letter on January 13, 2005.[8] This order approves the proposed rule change, as amended. In addition, the Commission is publishing notice to solicit comments on and is simultaneously approving, on an accelerated basis, Amendment Nos. 3 and 5.

II. Description of the Proposed Rule Change

Complex options orders involve multiple options transactions that are executed simultaneously as part of a single strategy. The CBOE currently routes complex orders to the PAR terminal in an options trading crowd. A complex order resides on PAR until the Designated Primary Market Maker (''DPM'') announces the order to the trading crowd and the order trades in open outcry. Thus, under the CBOE's current rules, a DPM must intervene to execute complex orders. To facilitate more automated handling of complex orders, the CBOE proposes to adopt CBOE Rule 6.53C, ''Complex Orders on the Hybrid System,'' which establishes a COB for certain complex orders traded on Hybrid.[9]

The appropriate CBOE committee will decide, on a class by class basis, whether complex orders in an options class will route directly to the COB or to PAR.[10] In addition, the appropriate CBOE committee will decide whether to allow complex orders from non-broker-dealer public customers and from broker-dealers that are not options exchange market makers or specialists to route from PAR to the COB.[11] The CBOE will announce routing decisions to members via Regulatory Circular.[12]

When a complex order routes to PAR, the DPM will announce the order to the trading crowd, which may trade with the order at its limit price or offer price improvement. If the trading crowd chooses not to trade with the order, the order will reside on PAR until the DPM routes the order to the COB.

An order routed to the COB may trade in one of three ways. First, the order may execute automatically against individual orders or quotes in the CBOE's electronic book (''EBook''), provided that the complex order can be executed in full, or in a permissible ratio, by orders in EBook. Second, an incoming complex order that is marketable against a complex order resting in the COB may execute automatically against the resting order. Third, market participants, as defined in CBOE Rule 6.45A, ''Priority and Allocation of Trades for CBOE Hybrid System,'' may trade against orders in the COB.[13] CBOE members with an interface connection to the CBOE will be able to view orders resting in the COB.

A complex order in the COB will be allocated to market participants in accordance with the allocation procedures described in CBOE Rule 6.45A(c). In addition, CBOE Rule 6.45A, Interpretation and Policies .01 and .02, apply to complex orders on Hybrid.[14]

Complex orders resting in the COB may be executed without consideration to the prices of the same complex orders that might be available on other exchanges.[15] Orders of public customers in the COB will have priority over orders from non-public customers, and multiple public customer complex orders at the same price will be accorded priority based on time.[16]

CBOE Rules 6.45, ''Priority of Bids and Offers,'' and 6.45A(b)(iii) generally allow a member holding a complex order to trade ahead of the book on one leg of the order, provided that the other leg of the order betters the corresponding bid (offer) in the limit order book. These rules will continue to apply to the trading of complex orders.

Amendment No. 3 adopts Interpretation and Policy .01 to CBOE Rule 6.53C. Interpretation and Policy .01 states that conversions and reversals will not be eligible for routing to the COB and that the CBOE will file any changes to Interpretation and Policy .01 with the Commission pursuant to Section 19(b)(3)(A) of the Act.

Amendment No. 5 adopts Interpretation and Policy .02 to CBOE Rule 6.53C. Interpretation and Policy .02 states that until May 27, 2005, the N-second group timer, as described in CBOE Rule 6.45A(c), for complex order transactions will be set at zero seconds.[17] Effective May 30, 2005, the N-second timer for complex order transactions will be set at the same length for complex order transactions and for transactions that do not involve complex orders. According to the CBOE, the systems changes required to extend the N-second timer to the COB will not be ready until May. Interpretation and Policy .02 affects only the length of the N-second timer and has no impact on customer orders.

III. Summary of Comments Received and CBOE Response

The Commission received one comment letter regarding the proposal.[18] Although the commenter believed that the COB would increase transparency, the commenter expressed

[6] *See* Securities Exchange Act Release No. 50682 (November 17, 2004), 69 FR 61897.

[7] *See* letter from Matthew Hinerfeld, Managing Director and Deputy General Counsel, Citadel Investment Group, LLC, to Jonathan G. Katz, Secretary, Commission, dated December 15, 2004 (''Citadel Letter'').

[8] *See* letter from Stephen M. Youhn, Managing Senior Attorney, CBOE, to Jonathan G. Katz, Secretary, Commission, dated January 13, 2005 (''CBOE Letter'').

[9] Complex orders in non-Hybrid classes will not be placed in the COB. The following types of complex orders, as defined in CBOE Rule 6.53C(a), will be eligible for routing to the COB: spread orders; straddle orders; strangle orders; combination orders; ratio orders; butterfly spread orders; box/roll spread orders; and collar orders and risk reversals. Only complex orders with no more than four legs are eligible for the COB. *See* CBOE Rule 6.53C(c)(iv). Conversions and reversals will not be eligible for routing to the COB. *See* Amendment No. 3, *supra* note 4.

[10] *See* CBOE Rule 6.53C(c)(i).

[11] *See* CBOE Rule 6.53C(c)(i).

[12] *See* CBOE Rule 6.53C(c)(i).

[13] CBOE Rule 6.45A defines ''market participant,'' for purposes of that rule, to include an in-crowd market maker, a market maker complying with the in-person requirements of CBOE Rule 8.7.03(B)(1) who submits quotes from off the CBOE floor through the facilities of the CBOE, an in-crowd DPM, an e-DPM, and a floor broker representing orders in the trading crowd.

[14] CBOE Rule 6.45A, Interpretation and Policy .01, ''Principal Transactions,'' prohibits an order entry firm from executing as principal against an order it represent as agent unless: (1) The agency order is first exposed on Hybrid for at least 30 seconds; (2) the order entry firm has been bidding or offering for at least 30 seconds prior to receiving an agency order that is executable against such bid or offer; or (3) the order entry firm proceeds in accordance with the crossing rules in CBOE Rule 6.74, '' 'Crossing' Orders.'' CBOE Rule 6.45A, Interpretation and Policy .02, ''Solicitation Orders,'' requires an order entry firm to expose for at least 30 seconds an order it represents as agent before the order may be executed electronically via the electronic execution mechanism of Hybrid, in whole or in part, against orders solicited from members and non-member broker-dealers to transact with the order.

[15] *See* CBOE Rule 6.53C(c)(iii). The Options Price Reporting Authority does not disseminate complex order prices. This provision of the CBOE's proposal is similar to International Securities Exchange Rule 722(b)(3).

[16] *See* CBOE Rule 6.53C(c)(ii).

[17] CBOE Rule 6.45A(c)(ii) states that each market participant that submits an order or quote to buy (sell) an order in the electronic book within a period of time not to exceed five seconds of the first market participant to submit an order (''N-second group'') will be entitled to receive an allocation of the order in the electronic book pursuant to the allocation algorithm specified in CBOE Rule 6.45A(c)(ii). The appropriate Floor Procedure Committee (''FPC'') determines the length of the N-second group timer, provided, however, that the duration of the N-second group timer may not exceed five seconds. *See* CBOE Rule 6.45A(c)(ii)(A).

[18] *See* Citadel Letter, *supra* note 7.

concern that the proposal would allow a CBOE committee, rather than DPMs and order routers, to determine the options classes that would be eligible for routing to the COB. The commenter believed that DPMs and order routers should have the ability to decide where complex orders would be routed. In this regard, the commenter stated that a DPM would have first-hand knowledge and experience with respect to the level of trading activity in his or her crowd and would know when it would be beneficial to route orders directly for automatic execution. The commenter also believed that order routers should be able to choose whether to route orders directly to the COB or to have their orders represented manually in the trading crowd.

In its response, the CBOE states that CBOE committees historically have had the responsibility, by CBOE rule and by charter, to determine the routing of orders. The CBOE notes that CBOE Rules 6.8, ''RAES Operations,'' and 6.13, ''CBOE Hybrid System's Automatic Execution Feature,'' provide CBOE committees with the authority to determine whether to allow orders from certain market professionals to auto-ex or to route to PAR.[19] Similarly, the CBOE notes that CBOE Rule 7.4, ''Obligations for Orders,'' allows CBOE committees to determine whether orders from certain market professionals should be eligible for routing into the electronic order book. According to the CBOE, the committees, which represent a broad cross-section of CBOE members, including market makers, DPMs, and order flow providers, consider multiple factors in making order routing decisions. The CBOE believes that providing DPMs and order routers with the unilateral ability to make order routing decisions would undermine the committee process and prevent the development of uniform order routing policies.

In addition, CBOE notes that its committees have yet to make any routing determinations for complex orders. CBOE states that such determinations would be evaluated on an ongoing basis and would take into account competitive forces and customer requests.

IV. Discussion

The Commission has carefully reviewed the proposed rule change, the comment letter, and the CBOE's response and 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.[20] In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[21] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

A complex order sent to the CBOE currently routes to the PAR terminal in a trading crowd, where the DPM announces the order to the trading crowd. If the trading crowd does not trade immediately with the order, the order will reside on PAR until it trades in open outcry. Thus, a complex order currently cannot be executed on the CBOE without manual intervention by a DPM.

The COB will allow complex orders to trade electronically, without the intervention of a DPM, and orders on the COB will be displayed to all CBOE members with an interface connection to the CBOE. As described more fully above, a complex order routed to the COB may execute automatically against orders in the EBook or against an order resting in the COB. In addition, market participants, as defined in CBOE Rule 6.45A, may trade against orders resting in the COB. Accordingly, the Commission believes that the COB should increase the transparency of complex orders and could facilitate the execution of complex orders.

Under the proposal, the appropriate CBOE committee will decide, on a class by class basis, the options classes that will route directly to the COB and those that will route to PAR.[22] As noted above, CBOE committees currently make some order routing determinations under existing CBOE rules.[23] Accordingly, the Commission believes that the discretion granted to CBOE committees with respect to the routing of complex orders under the proposal is consistent with the authority granted to CBOE committees under the CBOE's existing rules.

The Commission notes that CBOE Rule 6.45A, Interpretation and Policies .01 and .02 apply to complex orders on Hybrid.[24] Accordingly, a CBOE member seeking to trade with its customer's complex order would be required to comply with CBOE 6.45A, Interpretation and Policy .01, and a CBOE member seeking to cross its customer's complex order with solicited orders would be required to comply with CBOE Rule 6.45A, Interpretation and Policy .02.

In addition, the complex order priority provisions in CBOE Rules 6.45(e) and 6.45A(b)(iii) will continue to apply to complex orders. Accordingly, complex orders will be able to trade ahead of orders in the EBook or the limit order book only under the conditions specified in CBOE Rules 6.45(e) and 6.45A(b)(iii). The Commission also notes that complex orders from public customers will have priority over complex orders from non-public customers.[25]

The Commission finds good cause for approving Amendment Nos. 3 and 5 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 3 merely clarifies the text of CBOE Rule 6.53C by indicating that conversions and reversals currently are not eligible for routing to the COB and that the CBOE will file any changes to this policy with the Commission pursuant to Rule 19(b)(3)(A) under the Act. Amendment No. 5 also clarifies the operation of the COB by indicating that the N-second timer will be temporarily set at zero. Accordingly, the Commission finds that it is consistent with Sections 6(b)(5) and 19(b) of the Act to approve Amendment Nos. 3 and 5 to the proposal on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 3 and 5, including whether Amendment Nos. 3 and 5 are 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

[19] *See* CBOE Letter, *supra* note 8.

[20] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(5).

[22] The appropriate CBOE committee also will determine whether to allow complex orders from non-broker-dealer customers and from broker-dealers that are not options exchange market makers or specialists to route from PAR to the COB. *See* CBOE Rule 6.53C(c)(i).

[23] *See e.g.*, CBOE Rule 6.13(b)(i)(C)(ii) (allowing the appropriate FPC to determine, on a class-by-class basis, to allow orders from options market makers to be eligible for automatic execution on Hybrid); and CBOE Rule 7.4(a)(1) (allowing the appropriate FPC to determine on an issue-by-issue basis that orders from broker-dealers or from broker-dealers that are not options market makers are eligible for entry into the electronic book).

[24] *See* note 14, *supra*.

[25] *See* CBOE Rule 6.53C(c)(ii).

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2004–45 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–2004–45. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–45 and should be submitted on or before March 25, 2005.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[26] that the proposed rule change (SR–CBOE–2004–45), as amended, is approved, and that Amendment Nos. 3 and 5 are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

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[26] 15 U.S.C. 78s(b)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51267; File No. SR–ISE–2005–11]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Listing Standards for Options on Narrow-Based Indexes

February 25, 2005.

Introduction

On February 16, 2005, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposed rule change on an accelerated basis.

I. Description of the Proposal

The Exchange proposes to amend Rule 2002(b), Designation of the Index, which applies to the listing of index options. Specifically, the Exchange proposes to increase certain concentration limit listing standards in Rule 2002(b). Currently, under ISE Rule 2002(b), which contains generic listing standards pursuant to Rule 19b–4(e) of the Act,[3] the Exchange may trade options on a narrow-based index without filing a proposed rule change under Section 19(b)(2) of the Act if certain conditions are satisfied.[4] Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4,[5] if the Commission has approved, pursuant to Section 19(b) of the Act,[6] the self-regulatory organization's trading rules, procedures and listing standards for the product class that would include the new derivatives securities product, and the self-regulatory organization has a surveillance program for the product class.[7]

One of these conditions, set forth in ISE Rule 2002(b)(6), is that no single component security may represent more than 25% of the weight of the index, and that the five highest weighted component securities in the index may not, in the aggregate, account for more than 50% (60% for an index consisting of fewer than 25 component securities) of the weight of the index. The Exchange proposes to amend ISE Rule 2002(b)(6) to increase the 25% concentration limit for the highest weighted component stock to 30%, and to increase the concentration limit for the five mostly highly weighted stocks in an index consisting of fewer than 25 component securities from 60% to 65%.

II. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, as amended, and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change, is consistent with Section 6(b)(5) of the Act,[9] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities system, and, in general, protect investors and the public interest.

The Commission believes that this proposed rule change should provide additional flexibility to the Exchange in listing and trading narrow-based index options and reduce the instances in which the addition of a new series is restricted pursuant to ISE Rule 2002(b). The proposed rule change should also reduce instances where an index option listed on the Exchange is temporarily out of compliance with the concentration limits set forth under ISE Rule 2002(b) because of changes in the market value of the underlying index components. Lastly, the Commission believes that that the concentration limit listing standards should continue to serve the purpose for which they were originally intended of not permitting a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b4(e).

[4] *See* Securities Exchange Act Release No. 47749 (April 25, 2003); 68 FR 23507 (May 2, 2003) (Order approving rules relating to trading options on indices, including ISE Rule 2002(b)—Generic Narrow-Based Index Option Listing Criteria).

[5] 17 CFR 240.19b–4(c)(1).

[6] 15 U.S.C. 78s(b).

[7] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (the ''19b–4(e) Order'').

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

single security or small number of securities to dominate an index.

The Exchange has requested accelerated approval of the proposed rule change. The Commission notes that the proposed rule change is similar to rules previously approved for other derivative products.[10] The Commission also notes that a similar proposal was previously approved by the Commission and was subject to the full comment period, with no comments received.[11]

Accordingly, the Commission finds good cause, pursuant to Sections 6(b)(5) and 19(b)(2) of the Act,[12] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

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 No. SR–ISE–2005–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number SR–ISE–2005–11. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2005–11 and should be submitted on or before March 25, 2005.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–ISE–2005–11) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

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[10] *See* Securities Exchange Act Release Nos. 44532 (July 10, 2001), 66 FR 37078 (July 16, 2001) (SR–Amex–2001–25); and 45920 (May 13, 2002), 67 FR 35605 (May 20, 2002) (SR–NASD–2002–45).

[11] *See* Securities Exchange Act Release No. 50945 (December 29, 2004), 70 FR 1498 (January 7, 2005) (SR–Phlx–2004–66).

[12] 15 U.S.C. 78(b)(5) and 78s(b)(2).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51268; File No. SR–NASD–2004–125]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Regarding Procedures for Denying Listing on Nasdaq

February 28, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 18, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On February 9, 2005, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to amend various rules to enhance, clarify, and increase the transparency of the procedures associated with denying companies initial or continued listing on Nasdaq. Nasdaq will implement the proposed rule change immediately upon approval by the Commission.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in [brackets].[4] IM–4120–2. Disclosure of Written Notice of Staff Determination

[Rule 4815(b) requires] *Rules 4803(a) and 4804(b) require* that an issuer make a public announcement through the news media disclosing the receipt of *(i) a notice that the issuer does not meet a listing standard set forth in the Rule 4000 Series, and (ii)* a [Written Notice of] Staff Determination [(''Staff Determination'')] to *limit or* prohibit continued listing of the issuer's securities under Rule [4815(a)] *4804(a)* as a result of the issuer's failure to comply with the continued listing requirements[, and the Rule(s) upon which the Staff Determination was based]. Such public announcement shall be made as promptly as possible, but not more than [seven calendar] *four business* days following the receipt of the *notification or the* Staff Determination, *as applicable.* If the public announcement is not made by the issuer within the time allotted, trading of its securities shall be halted, even if the issuer appeals the Staff Determination as set forth in Rule [4820] *4805.* If the issuer fails to make the public announcement by the time that the Listing Qualifications Panel issues its decision, that decision will also determine whether to delist the issuer's securities for failure to make the public announcement.

[Rule 4815(b) does] *Rules 4803(a) and 4804(b) do* not relieve an issuer of its *disclosure* obligation [to make a materiality assessment of the pending delisting action as it may relate to the disclosure requirements of] *under* the federal securities laws, nor should it be construed as providing a safe harbor under the federal securities laws. It is suggested that the issuer consult with corporate/securities counsel in assessing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the original filing in its entirety.

[4] The proposed rule change is marked to show changes from the rules as they appear in the electronic NASD Manual available at *http://www.nasd.com.*

its disclosure obligations under the federal securities laws.

* * * * *

4300. Qualification Requirements for NASDAQ Stock Market Securities

The Nasdaq Stock Market[,] is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market. The Nasdaq Stock Market stands for integrity and ethical business practices in order to enhance investor confidence, thereby contributing to the financial health of the economy and supporting the capital formation process. Nasdaq issuers, from new public companies to companies of international stature[, by being included in Nasdaq,] are publicly recognized as sharing these important objectives [of The Nasdaq Stock Market].

Nasdaq, therefore, in addition to applying the enumerated criteria set forth in the Rule 4300 and 4400 Series, [will exercise] *has* broad discretionary authority over the initial and continued inclusion of securities in Nasdaq in order to maintain the quality of and public confidence in its market, *to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.* [Under such broad discretion and in addition to its authority under Rule 4330(a),] Nasdaq may *use such discretion* to deny initial inclusion, [or] apply additional or more stringent criteria for the initial or continued inclusion of particular securities, or suspend or terminate the inclusion of particular securities based on any event, condition, or circumstance [which] *that* exists or occurs that makes initial or continued inclusion of the securities in Nasdaq inadvisable or unwarranted in the opinion of Nasdaq, even though the securities meet all enumerated criteria for initial or continued inclusion in Nasdaq. *In all circumstances where one of the Listing Departments (as defined in Rule 4801) exercises its authority under Rule 4300, the Listing Department shall issue a Staff Determination under Rule 4804, and in all circumstances where an Adjudicatory Body (as defined in Rule 4801) exercises such authority, the use of the authority shall be described in the written decision of the Adjudicatory Body.*

IM–4300. Use of Discretionary Authority

In order to further issuers' understanding of Rule 4300, Nasdaq is adopting this Interpretive Material as a non-exclusive description of the circumstances in which the Rule is generally invoked.

Nasdaq may use its authority under Rule 4300 to deny initial or continued listing to an issuer when an individual with a history of regulatory misconduct is associated with the issuer. Such individuals are typically an officer, director, substantial security holder (as defined in Rule 4350(i)(5)), or consultant to the issuer. In making this determination, Nasdaq shall consider a variety of factors, including the severity of the violation; whether it involved fraud or dishonesty; whether it was securities-related; whether the investing public was involved; when the violation occurred; how the individual has been employed since the violation; whether there are continuing sanctions against the individual; whether the individual made restitution; whether the issuer has taken effective remedial action; and the totality of the individual's relationship to the issuer.

Based on this review, Nasdaq may determine that the regulatory history rises to the level of a public interest concern, but may also consider whether remedial measures proposed by the issuer, if taken, would allay that concern. Examples of such remedial measures could include the individual's resignation from officer and director positions; divestiture of stock holdings; terminations of contractual arrangements between the issuer and the individual; or the establishment of a voting trust surrounding the individual's shares. Alternatively, Nasdaq may conclude that a public interest concern is so serious that no remedial measure would be sufficient to alleviate it. In the event that Nasdaq staff makes such a determination, the issuer may seek review of that determination through the procedures set forth in the Rule 4800 Series.

Nasdaq may also use its discretionary authority, for example, when an issuer files for protection under any provision of the federal bankruptcy laws or comparable foreign laws, when an issuer's independent accountants issue a disclaimer opinion on financial statements required to be audited, or when financial statements do not contain a required certification.

In addition, pursuant to its discretionary authority, Nasdaq shall review issuer's past corporate governance activities. This review may include activities taking place while the issuer is listed on Nasdaq or an exchange that imposes corporate governance requirements, as well as activities taking place after a formerly listed issuer is no longer listed on Nasdaq or such an exchange. Based on such review, and in accordance with the Rule 4800 Series, Nasdaq may take any appropriate action, including placing restrictions on or additional requirements for listing, or denying listing of a security if Nasdaq determines that there have been violations or evasions of such corporate governance standards. Such determinations shall be made on a case-by-case basis as necessary to protect investors and the public interest.

Although Nasdaq has broad discretion under Rule 4300 to impose additional or more stringent criteria, the Rule does not provide a basis for Nasdaq to grant exemptions or exceptions from the enumerated criteria for initial or continued inclusion, which may be granted solely pursuant to rules explicitly providing such authority.

* * * * *

4330. [Suspension or Termination of Inclusion of a Security and Exceptions to Inclusion Criteria] *Obligation To Provide Information*

[(a) Nasdaq may, in accordance with Rule 4800 Series, deny inclusion or apply additional or more stringent criteria for the initial or continued inclusion of particular securities or suspend or terminate the inclusion of an otherwise qualified security if:]

[(1) An issuer files for protection under any provision of the federal bankruptcy laws;]

[(2) An issuer's independent accountants issue a disclaimer opinion on financial statements required to be certified; or]

[(3) Nasdaq deems it necessary to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, or to protect investors and the public interest.]

[(b) If the Association determines to suspend or terminate a security's inclusion because of noncompliance with the provisions of this Rule 4000 Series, the Association will notify the issuer prior to suspension or termination or as soon as practicable thereafter. This notification constitutes a Staff Determination for purposes of Rule 4815 and the issuer may request review of the decision under the Rule 4800 Series.]

[(c)] Nasdaq may request any additional information or documentation, public or non-public, deemed necessary to make a determination regarding a security's initial or continued inclusion, including, but not limited to, any material provided to or received from the Commission or other appropriate regulatory authority. [Information requested pursuant to this subparagraph shall be submitted within a reasonable

period.] An issuer may be delisted if it fails to provide such information[.] *within a reasonable period of time or* [An issuer may also be delisted] if any communication to Nasdaq contains a material misrepresentation or omits material information necessary to make the communication to Nasdaq not misleading.

[(d) Nasdaq may make exceptions to the application of the criteria contained in Rule 4310 or Rule 4320 where it deems it appropriate.]

[(e) A security that has been suspended shall be required, prior to re-inclusion, to comply with requirements for continued inclusion. A security that has been terminated shall be required, prior to re-inclusion, to comply with the requirements for initial inclusion.]

[(f)]

4340. Reverse Mergers

An issuer must apply for initial inclusion following a transaction whereby the issuer combines with a non-Nasdaq entity, resulting in a change of control of the issuer and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing (for purposes of this rule, such a transaction is referred to as a ''Reverse Merger''). In determining whether a Reverse Merger has occurred, Nasdaq [will] *shall* consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the issuer. Nasdaq [will] *shall* also consider the nature of the businesses and the relative size of the Nasdaq issuer and non-Nasdaq entity.

4350. Qualitative Listing Requirements for Nasdaq National Market and Nasdaq Small Cap Market Issuers Except for Limited Partnerships

[Nasdaq shall review the issuer's past corporate governance activities. This review may include activities taking place while the issuer is listed on Nasdaq or an exchange that imposes corporate governance requirements, as well as activities taking place after a formerly listed issuer is no longer listed on Nasdaq or an exchange that imposes corporate governance requirements. Based on such review, Nasdaq may take any appropriate action, including placing of restrictions on or additional requirements for listing, or the denial of listing of a security if Nasdaq determines that there have been violations or evasions of such corporate governance standards. Such determinations shall be made on a case-by-case basis as necessary to protect investors and the public interest.]

(a)–(h) No change.

(i) Shareholder Approval

(1) No change.

(2) *An* [E]*exception*[s] *applicable to a specified issuance of securities* may be made upon *prior written* application to Nasdaq*'s Listing Qualifications Department* when: (A) The delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise; and (B) reliance by the company on this exception is expressly approved by the audit committee or a comparable body of the board of directors *comprised solely of independent, disinterested directors. The Listing Qualifications Department shall respond to each application for such an exception in writing.*

A company [relying on this] *that receives such an* exception must mail to all shareholders not later than ten days before issuance of the securities a letter alerting them to its omission to seek the shareholder approval that would otherwise be required [and indicating]. *Such notification shall disclose the terms of the transaction (including the number of shares of common stock that could be issued and the consideration received), the fact that the issuer is relying on a financial viability exception to the shareholder approval rules, and* that the audit committee or a comparable body of the board of directors *comprised solely of independent, disinterested directors* has expressly approved *reliance on* the exception. *The issuer shall also make a public announcement through the news media disclosing the same information as promptly as possible, but no later than ten days before the issuance of the securities.*

(3)–(6) No change.

(j)–(n) No change.

IM–4350–1. Interpretive Material Regarding Future Priced Securities

Summary. No change.

How the Rules Apply

Shareholder Approval. No change.

Voting Rights. No change.

The Bid Price Requirement. No change.

Listing of Additional Shares. No change.

Public Interest Concerns

NASD Rule 4300 provides:

The Nasdaq Stock Market is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market. The Nasdaq Stock Market stands for integrity and ethical business practices in order to enhance investor confidence, thereby contributing to the financial health of the economy and supporting the capital formation process. Nasdaq issuers, from new public companies to companies of international stature[, by being included in Nasdaq,] are publicly recognized as sharing these important objectives [of The Nasdaq Stock Market].

Nasdaq, therefore, in addition to applying the enumerated criteria set forth in the Rule 4300 and 4400 Series, has broad discretionary authority over the initial and continued inclusion of securities in Nasdaq in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. Nasdaq may use such discretion to deny initial inclusion, apply additional or more stringent criteria for the initial or continued inclusion of particular securities, or suspend or terminate the inclusion of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued inclusion of the securities in Nasdaq inadvisable or unwarranted in the opinion of Nasdaq, even though the securities meet all enumerated criteria for initial or continued inclusion in Nasdaq.

[NASD Rule 4330(a) provides:

Nasdaq may * * * deny inclusion or apply additional or more stringent criteria for the initial or continued inclusion of particular securities or suspend or terminate the inclusion of an otherwise qualified security if * * * Nasdaq deems it necessary to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, or to protect investors and the public interest.]

The returns on Future Priced Securities may become excessive compared with those of public investors in the issuer's common securities. In egregious situations, the use of a Future Priced Security may raise public interest concerns under Rule[s] 4300 [and 4330(a)]. In addition to the demonstrable business purpose of the transaction, other factors that Nasdaq staff will consider in determining whether a transaction raises public interest concerns include: (1) The amount raised in the transaction relative to the issuer's existing capital structure; (2) the dilutive effect of the transaction on the existing holders of common stock; (3) the risk undertaken by the Future Priced Security investor; (4) the relationship between the Future Priced Security investor and the issuer; (5) whether the transaction was preceded by other similar transactions; and (6) whether the transaction is consistent

with the just and equitable principles of trade.

Some Future Priced Securities may contain features that address the public interest concerns. These features tend to provide incentives to the investor to hold the security for a longer time period and limit the number of shares into which the Future Priced Security may be converted. Such features may limit the dilutive effect of the transaction and increase the risk undertaken by the Future Priced Security investor in relationship to the reward available.

Reverse Merger

NASD Rule [4330(f)] *4340* provides:

An issuer must apply for initial inclusion following a transaction whereby the issuer combines with a non-Nasdaq entity, resulting in a change of control of the issuer and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing (for purposes of this rule, such a transaction is referred to as a ''Reverse Merger''). In determining whether a Reverse Merger has occurred, Nasdaq [will] *shall* consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the issuer. Nasdaq [will] *shall* also consider the nature of the businesses and the relative size of the Nasdaq issuer and non-Nasdaq entity.

This provision, which applies regardless of whether the issuer obtains shareholder approval for the transaction, requires issuers to qualify under the initial inclusion standards following a Reverse Merger.[4] It is important for issuers to realize that in certain instances, the conversion of a Future Priced Security may implicate this provision. For example, if there is no limit on the number of common shares issuable upon conversion, or if the limit is set high enough, the exercise of conversion rights under a Future Priced Security could result in a Reverse Merger with the holders of the Future Priced Securities. In such event, an issuer may be required to re-apply for initial inclusion and satisfy all initial inclusion requirements.

* * * * *

4410. Applications for Designation

(a)–(b) No change.

[(c) Nasdaq shall review the issuer's past corporate governance activities when the issuer's securities were traded on or after withdrawal from Nasdaq National Market or a securities exchange which imposes corporate governance requirements. Based on such review, Nasdaq may take any appropriate action, including placing of restrictions on or additional requirements for designation, or the denial of designation of a security, if Nasdaq determines that there have been violations or evasions of such corporate governance standards. Determinations under this paragraph (c) shall be made on a case-by-case basis as necessary to protect investors and the public interest.

(d) Nasdaq may make exceptions to the criteria contained in the Rule 4400 Series where it deems appropriate.]

* * * * *

4800. PROCEDURES FOR REVIEW OF NASDAQ LISTING DETERMINATIONS

4801. Definitions

(a) The term ''Adjudicator'' shall mean a member of an Adjudicatory Body.

(b) The term ''Adjudicatory Body'' shall mean a Listing Qualifications Panel, the Listing Council, or the NASD Board.

(c) The term ''Advisor'' shall mean an individual employed by Nasdaq or NASD who is advising an Adjudicatory Body with respect to a proceeding under the Rule 4800 Series.

(d) The term ''Hearings Department'' shall mean the Nasdaq Office of Listing Qualifications Hearings.

(e) The term ''Listing Council'' shall mean the Nasdaq Listing and Hearing Review Council, a committee appointed by the Nasdaq Board of Directors pursuant to Article V of the Nasdaq By-Laws whose responsibilities include the review of determinations to limit or prohibit the listing of an issuer's securities made by a Listing Qualifications Panel.

(f) The term ''Listing Council Decision'' shall mean a written decision of the Listing Council.

(g) The term ''Listing Departments'' shall mean the Listing Qualifications Department and the Listing Investigations Department, the departments of Nasdaq that are responsible for evaluating the compliance of issuers with the quantitative and qualitative listing standards set forth in the Rule 4000 Series and determining the eligibility for initial or continued listing of an issuer's securities.

(h) The term ''Listing Qualifications Panel'' or ''Panel'' shall mean an independent panel composed of at least two persons, not employees of the NASD or its subsidiaries, designated by the Nasdaq Board of Directors.

(i) The term ''NASD Board'' shall mean the Board of Governors of the NASD.

(j) The term ''Panel Decision'' shall mean a written decision of a Listing Qualifications Panel.

(k) The term ''Staff Determination'' shall mean a written determination by either or both of the Listing Departments to limit or prohibit the initial or continued listing of an issuer's securities pursuant to Rule 4804.

4802 [4810]. Purpose and General Provisions

(a) The purpose of this Rule 4800 Series is to provide procedures for the independent review of determinations of the Association that prohibit or limit the listing of an issuer's securities on the Nasdaq Stock Market based upon the Nasdaq Stock Market Rules, as set forth in the Rule 4000 Series. Securities of issuers that do not meet the quantitative or qualitative listing standards set forth in the Rule 4000 Series are subject to delisting from, or denial of initial inclusion on, The Nasdaq Stock Market.

(b) An issuer may file a written request for an [extension of time] *exception* to [comply with] any of the standards set forth in the Rule 4000 Series [or an exception to those standards] at any time during the pendency of a proceeding under the Rule 4800 Series. [The Association]*A Listing Qualifications Panel* may grant [extensions or] exceptions *of up to 90 days from the date of the Panel Decision, and the Listing Council may grant exceptions of up to 60 days from the date of the Listing Council Decision* where it deems appropriate.

(c) At each level of a proceeding under the Rule 4800 Series, the Listing Qualifications Panel [(as defined in Rule 4830)], *the* [Nasdaq] Listing [and Hearing Review] Council [(the ''Listing Council'')], or the NASD Board [of Governors (the ''NASD Board'')], as part of its respective review, *(1)* may request additional information from the issuer *or the Listing Departments, and (2) may consider such additional information available from any source as the Adjudicatory Body may deem to be relevant.* The issuer [will] *and the Listing Departments shall* be afforded *written notice and* an opportunity to address the significance of [the] *any such* information requested *or considered.*

[(d) At each level of a proceeding under the Rule 4800 Series, the Listing Qualifications Panel, Listing Council, or NASD Board, as part of its respective

[4] This provision is designed to address situations where a company attempts to obtain a ''backdoor listing'' on Nasdaq by merging with a Nasdaq issuer with minimal assets and/or operations.

review, may consider the issuer's bid price, market makers or any information that the issuer releases to the public, including any additional quantitative deficiencies reflected in the released information.]

[(e)] *(d)* At each level of a proceeding under the Rule 4800 Series, [the Listing Qualifications Panel, Listing Council, or NASD Board] *an Adjudicatory Body*, as part of its respective review, may consider any failure to meet any quantitative standard or qualitative consideration set forth in the Rule 4000 Series, including failures previously not considered in the proceeding. The Listing Council or the NASD Board, as part of its respective review, may also consider any action by an issuer during the review process that would have constituted a violation of Nasdaq's corporate governance requirements had the issuer's securities been listed on Nasdaq at the time. The issuer [will] *shall* be afforded *written* notice of such consideration and an opportunity to respond. Furthermore, *an Adjudicatory Body* [the issuer] may [be] subject *the issuer* to additional or more stringent criteria for the initial or continued inclusion of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued inclusion of the securities inadvisable or unwarranted in the opinion of the [Association] *Adjudicatory Body*, even though the securities meet all enumerated criteria for initial or continued inclusion in The Nasdaq Stock Market.

(e) The Listing Departments or the Advisor to an Adjudicatory Body, as applicable, shall document the date on which a decision with respect to an issuer is implemented.

(f) A security that has been suspended shall be required, prior to re-inclusion, to comply with requirements for continued inclusion. A security that has been delisted shall be required, prior to re-inclusion, to comply with the requirements for initial inclusion.

4803. Staff Review of Deficiency

(a) Whenever staff of a Listing Department determines that an issuer does not meet a listing standard set forth in the Rule 4000 Series, staff shall immediately notify the issuer. The issuer shall make a public announcement through the news media disclosing the receipt of this notice, including the Rule(s) upon which it was based. Prior to the release of the public announcement, the issuer shall provide such disclosure to Nasdaq's StockWatch and Listing Qualifications Departments. The public announcement shall be made as promptly as possible, but not more than four business days following receipt of the notice from the Listing Department.

(1) In the case of

(A) All quantitative deficiencies from standards that do not provide a compliance period;

(B) Deficiencies from the standards of Rules 4350(c) or (d) or 4360(c) or (d) where the cure period of the Rule is not applicable; or

(C) Deficiencies from the standards of Rules 4350(f), (h), (i), (k), or (n), 4360(f) or (i), or 4351;

staff's notice shall provide the issuer with fifteen calendar days to submit a plan to regain compliance with the listing standard; provided, however, that the issuer shall not be provided with an opportunity to submit such a plan if review under the Rule 4800 Series of a prior Staff Determination with respect to the issuer is already pending. Subject to the restrictions of paragraph (b), staff may extend this deadline upon good cause shown. Upon receipt of the issuer's plan, staff in the Listing Department may request such additional information from the issuer as is necessary to make a determination regarding the likelihood that the plan will allow the issuer to meet the listing standard at issue.

(2) In the case of:

(A) Quantitative deficiencies from standards that do provide a compliance period; and

(B) Deficiencies from the standards of Rules 4350(c) or (d) or 4360(c) or (d) where the cure period of the Rule is applicable; staff's notice shall provide the issuer with the applicable compliance or cure period.

(3) In all other cases, staff's notice shall be in the form a Staff Determination issued pursuant to Rule 4804(a).

(b) Unless review under the Rule 4800 Series of a prior Staff Determination with respect to the issuer is already pending, the Listing Department may grant the issuer additional time to regain compliance with a listing standard described in paragraph (a)(1); provided, however, that the additional time provided by all such exceptions shall not exceed 105 calendar days from the date of staff's notification pursuant to paragraph (a). The Listing Department shall prepare a written record describing the basis for granting any exception, and shall provide the issuer with written notice as to the terms of the exception. If the issuer does not regain compliance within the time period provided by all applicable exceptions, the Listing Department shall immediately issue a Staff Determination pursuant to Rule 4804(a). If the Listing Department determines not to grant the issuer additional time to regain compliance, the Listing Department shall immediately issue a Staff Determination pursuant to Rule 4804(a) that includes a description of the basis for denying the exception.

IM–4803. Staff Review of Deficiency

As provided in Rule 4803(a)(1)(A), the staff of a Listing Department may accept a plan to regain compliance with respect to quantitative deficiencies from standards that do not themselves provide a compliance period. Such standards include:

- *Rules 4310(c)(2)(B)(i) and (iii)*
- *Rule 4310(c)(6)*
- *Rule 4310(c)(7) (but only as to the number of publicly held shares, and not as to such shares' market value)*
- *Rules 4320(e)(2)(B)(i) and (iii)*
- *Rules 4320(e)(4) and (5) (but only as to the number of publicly held shares, and not as to such shares' market value)*
- *Rules 4450(a)(1), (3), and (4)*
- *Rules 4450(b)(1)(B), (b)(2), and (b)(5), and*
- *Rules 4450(h)(1) and (4).*

In a case where an issuer fails to comply with the requirement of Rules 4310(c)(2)(B)(iii), 4320(e)(2)(B)(iii), or 4450(b)(1)(B), the Listing Department shall not accept a plan to achieve compliance with those requirements in the future, since compliance requires stated levels of net income or assets and revenues during completed fiscal years and therefore can only be demonstrated through audited financial statements. Similarly, an issuer may not submit a plan relying on partial-year performance to demonstrate compliance with these standards. An issuer cited for non-compliance with these requirements may, however, submit a plan that demonstrates current or near-term compliance with Rules 4310(c)(2)(B)(i), 4320(e)(2)(B)(i), or 4450(a)(3) (i.e., the alternative listing requirement relating to stockholders' equity), or Rules 4310(c)(2)(B)(ii), 4320(e)(2)(B)(ii), or 4450(b)(1)(A) (i.e., the alternative listing requirement relating to market value of listed securities).

4804 [4815]. Written Notice of Staff Determination

(a) If *either of* the Listing [Qualifications] Departments [or the Listing Investigations Department] reaches a determination [(the ''Staff Determination'')] to limit or prohibit the initial or continued listing of an issuer's securities, it [will] *shall prepare and provide to the issuer a Staff*

Determination [notify the issuer,] *that shall* describe the specific grounds for the determination, identify the quantitative standard or qualitative consideration set forth in the Rule 4000 Series that the issuer has failed to satisfy, and provide notice that upon request the issuer [will] *shall* be provided an opportunity for a hearing under this Rule 4800 Series.

(b) An issuer that receives a Staff Determination to prohibit continued listing of the issuer's securities under Rule [4815] *4804*(a) shall make a public announcement through the news media disclosing the receipt of the Staff Determination, including the Rule(s) upon which the Staff Determination was based. Prior to the release of the public announcement, an issuer shall provide such disclosure to Nasdaq's StockWatch and Listing Qualifications Departments.[*] The public announcement shall be made as promptly as possible, but not more than [seven calendar] *four business* days following receipt of the Staff Determination.

4805 [4820]. Request for Hearing

(c) If review under the Rule 4800 Series of a Staff Determination is pending and either of the Listing Departments identifies the existence of one or more additional deficiencies with respect to the issuer, the Listing Department shall prepare and provide to the issuer a Staff Determination with respect to such additional deficiencies. If the new Staff Determination is issued prior to a Panel hearing with respect to the original Staff Determination, the new Staff Determination shall notify the issuer that it should present its views with respect to the additional deficiencies at the Panel hearing. If the new Staff Determination is issued after a Panel hearing with respect to the original Staff Determination, the new Staff Determination shall inform the issuer that it should present its views with respect to the additional deficiencies in writing within the period specified in the Staff Determination, to allow review of the additional deficiencies as provided under Rule 4802(d).

(a) An issuer may, within seven calendar days of the date of the Staff Determination, request either a written or oral hearing to review the Staff Determination. Requests for hearings should be filed with [The Nasdaq Office of Listing Qualifications Hearings (]the ['']Hearings Department[''])]. A request for a hearing shall stay the delisting action pending the issuance of a [written determination by a Listing Qualifications] Panel *Decision.* If no hearing is requested within the seven calendar day period, the right to request review is waived, and the Staff Determination shall take immediate effect. All hearings shall be held before a Listing Qualifications Panel as described in Rule *4806* [4830]. All hearings shall be scheduled, to the extent practicable, within 45 days of the date that the request for hearing is filed, at a location determined by the Hearings Department. The Hearings Department shall make an acknowledgment of the issuer's hearing request stating the date, time, and location of the hearing, and the deadline for written submissions to the Listing Qualifications Panel. The issuer shall be provided at least 10 calendar days notice of the hearing unless the issuer waives such notice.

(b) The issuer may file a written submission with the Hearings Department stating the specific grounds for the issuer's contention that the Staff Determination was in error or requesting *that the Listing Qualifications Panel grant* an [extension of time to comply with the listing requirements or an] exception [to those requirements], as permitted by Rule *4802* [4810]. The issuer may also submit any documents or other written material in support of its request for review, including any information not available at the time of the Staff Determination.

(c) No change.

4806 [4830]. The Listing Qualifications Panel

(a) All hearings [will] *shall* be conducted before a[n independent panel (the '']Listing Qualifications Panel['']) composed of at least two persons, not employees of the NASD or its subsidiaries, designated by the Nasdaq Board of Directors. No person shall serve as a Listing Qualifications Panel member for a matter if his or her interest or the interests of any person in whom he or she is directly or indirectly interested will be substantially affected by the outcome of the matter].

[(b)] Prior to the hearing, the Listing Qualifications Panel [will] *shall* review the written record, as defined in Rule *4811* [4870]. At the hearing, the issuer may make such presentation as it deems appropriate, including the appearance by its officers, directors, accountants, counsel, investment bankers, or other persons. Hearings are generally scheduled to last one hour, but may be extended at the discretion of the Listing Qualifications Panel. The Listing Qualifications Panel may question any representative of the issuer appearing at the hearing. A transcript of oral hearings [will] *shall* be kept. The record of proceedings before a Listing Qualifications Panel [will] *shall* be kept by the Hearings Department.

[(c)] *(b)* After the hearing, the Listing Qualifications Panel [will] *shall* issue a [written decision (the '']Panel Decision['']) describing the specific grounds for the determination and identifying the quantitative standard or qualitative consideration set forth in the Rule 4000 Series that the issuer has failed to satisfy] *that meets the requirements of Rule 4811, and, except as provided in paragraph (c), each member of the Listing Qualifications Panel shall affirmatively approve it.* The Panel Decision [will] *shall* be promptly provided to the issuer and is effective immediately unless it specifies to the contrary. The Panel Decision [will] *shall* provide notice that the issuer may request review of the Panel Decision by the [Nasdaq] Listing [and Hearing Review] Council within 15 calendar days of the date of the Panel Decision and that the Panel Decision may be called for review by the [Nasdaq] Listing [and Hearing Review] Council within 45 calendar days from the date of the Panel Decision pursuant to Rule *4807* [4840].

[(d)] *(c)* If, following the hearing, the Listing Qualifications Panel cannot reach an unanimous decision regarding the matter under review, a Panel Decision shall not be issued, and the issuer shall be notified of this circumstance. Thereafter, the issuer shall be provided an additional hearing before a Listing Qualifications Panel composed of three persons who did not participate in the previous hearing. The issuer may determine whether the hearing [will] *shall* be conducted based on the written record or an oral hearing, whether in person or by telephone. The issuer may submit any documents or other written material in support of its request for review, including any information not available at the time of the initial hearing before the Listing Qualifications Panel. There shall be no fee for the new hearing. *After a hearing of a Listing Qualifications Panel convened pursuant to this paragraph (c), the Listing Qualifications Panel shall issue a Panel Decision that meets the requirements of Rule 4811 and that has been affirmatively approved by at least a majority of the Listing Qualifications Panel.*

(d) In the event that a Listing Qualifications Panel exercises its authority under Rule 4802(b) to grant an

[* Notification may be provided to the StockWatch section of Nasdaq's MarketWatch Department at 1–800–537–3929 or (301) 978–8500 (telephone), (301) 978–8510 (facsimile) and to the Hearings Department of Nasdaq's Listing Qualifications Department at (301) 978–8079 (telephone), (301) 978–8080 (facsimile).]

exception from listing standards in the Rule 4000 Series requiring the issuer to maintain certain levels of stockholders' equity or to file periodic reports with the Commission in a timely manner, the Listing Qualifications Panel shall retain jurisdiction over the issuer; provided, however, that the Listing Qualification Panel's jurisdiction shall be concurrent with the Listing Council's jurisdiction to review the Panel Decision under Rule 4807, and a decision of the Listing Council may divest the Listing Qualification Panel of jurisdiction. If the issuer regains compliance with such listing standards during the time period covered by the exception granted by the Listing Qualifications Panel, the Panel shall monitor the issuer's continued compliance for a period of one year following the date that the issuer regained compliance. If the issuer again fails to satisfy such listing standards during such one-year period, the Listing Qualifications Panel (or a newly convened Panel if the initial Panel is unavailable) shall promptly conduct a hearing with respect to such failure pursuant to Rule 4806(a).

4807 [4840]. Review by the Nasdaq Listing and Hearing Review Council

(a) [The Nasdaq Listing and Hearing Review Council (the ''Listing Council'') is a committee appointed by the Nasdaq Board of Directors pursuant to Article V of the Nasdaq By-laws whose responsibilities include the consideration of determinations to limit or prohibit the listing of an issuer's securities.

(b)] The issuer may initiate the Listing Council's review of any Panel Decision by making a written request within 15 calendar days of the date of the decision. Requests for review should be addressed to the Listing Council in care of the Nasdaq Office of Appeals and Review. The request [will] *shall* not operate as a stay of the Panel Decision. Also within 15 calendar days of the date of the Panel Decision, the issuer must submit a fee of $4,000 to The Nasdaq Stock Market, Inc. to cover the cost of the review. Upon receipt of the request for review and the applicable fee, the Nasdaq Office of Appeals and Review [will] *shall* make an acknowledgment of the issuer's request stating the deadline for the issuer to provide any written submissions.

[(c)] *(b)* The Listing Council may also consider any Panel Decision upon the request of one or more members of the Listing Council within 45 calendar days of the date of the Panel Decision. The issuer [will] shall be promptly informed of the reasons for the review and [will] *shall* be provided a deadline to provide a written submission if the issuer wishes. The institution of discretionary review by the Listing Council [will] *shall* not operate as a stay of the Panel Decision, unless the call for review specifies to the contrary. At the sole discretion of the Listing Council, the call for review of a Panel Decision may be withdrawn at any time prior to the issuance of a decision.

[(d)] *(c)* The Listing Council [will] *shall* consider the written record and, at its discretion, hold additional hearings. Any hearing [will] *shall* be scheduled, to the extent practicable, within 45 days of the date that a request for review initiated by either the issuer or one or more members of the Listing Council, is made. The Listing Council may also recommend that the NASD Board [of Governors (''NASD Board'')] consider the matter. The record of proceedings before the Listing Council [will] *shall* be kept by the Nasdaq Office of Appeals and Review.

(d) In each proceeding before the Listing Council, a subcommittee consisting of at least two members of the Listing Council shall review the complete written record. Members of the Listing Council who are not on a subcommittee shall be provided with a written summary of the record prepared by an Advisor, and may, but shall not be required to, review the complete written record.

(e) The Listing Council [will] *shall* issue a [written decision (the '']Listing Council Decision['')] that affirms, modifies, or reverses the Panel Decision or that [refers] *remands* the matter to [Nasdaq staff] *the Listing Departments* or to the Listing Qualifications Panel for further consideration. The Listing Council Decision [will describe the specific grounds for the decision, identify the quantitative standard or qualitative consideration set forth in the Rule 4000 Series that the issuer has failed to satisfy, and] *shall be affirmatively approved by at least a majority of the Listing Council and shall meet the requirements of Rule 4811. The Listing Council Decision shall* provide notice that the NASD Board may call the Listing Council Decision for review at any time before its next meeting which is at least 15 calendar days following the issuance of the Listing Council Decision. The Listing Council Decision [will] *shall* be promptly provided to the issuer and [will] *shall* take immediate effect unless it specifies to the contrary.

4808 [4845]. Reconsideration by the Listing Qualifications Panel and the Listing and Hearing Review Council

(a) An issuer may request that the Listing Qualifications Panel reconsider a Panel Decision only upon the basis that a mistake of material fact existed at the time of the Panel Decision. The issuer's request shall be made within seven calendar days of the date of issuance of the Panel Decision. An issuer's request for reconsideration shall not stay a Listing Qualifications Panel delisting determination unless the Listing Qualifications Panel issues a written determination staying the delisting prior to the scheduled date for delisting. An issuer's request for reconsideration shall not toll the time period set forth in Rule [4840(b)] *4807(a)* for the issuer to initiate the Listing Council's review of the Panel Decision. If the Listing Qualifications Panel grants an issuer's reconsideration request, the Listing Qualifications Panel shall issue a modified decision *meeting the requirements of Rule 4806(b)* within 15 calendar days following the issuance of the original Panel Decision or lose jurisdiction over the matter. If the Listing Council calls a Panel Decision for review on the same issue that the issuer has requested reconsideration by the Listing Qualifications Panel, the Listing Council, in its discretion, may assert jurisdiction over the Panel Decision or may permit the Listing Qualifications Panel to proceed with the reconsideration.

(b) An issuer may request that the Listing Council reconsider a Listing Council Decision only upon the basis that a mistake of material fact existed at the time of the Listing Council Decision. The issuer's request shall be made within seven calendar days of the date of issuance of the Listing Council Decision. If the Listing Council grants an issuer's reconsideration request, the Listing Council shall issued a modified decision *meeting the requirements of Rule 4807(e)* within 15 calendar days following the issuance of the original Listing Council Decision or lose jurisdiction over the matter.

(c) No change.

4809 [4850]. Discretionary Review by NASD Board

(a) A Listing Council Decision may be called for review by the NASD Board solely upon the request of one or more Governors not later than the next NASD Board meeting that is 15 calendar days or more following the date of the Listing Council Decision. Such review [will] *shall* be undertaken solely at the discretion of the NASD Board.

(b) If the NASD Board conducts a discretionary review, the review generally [will] *shall* be based on the written record considered by the Listing Council. However, the NASD Board may, at its discretion, request and

consider additional information from the issuer and/or from [Nasdaq] *staff of the Listing Departments.* [Should] *If* the Board considers additional information, the record of proceedings before the NASD Board [will] *shall* be kept by the Nasdaq Office of Appeals and Review.

(c) If the NASD Board conducts a discretionary review, the issuer [will] *shall* be provided with a written decision [describing the specific grounds for its decision, and identifying the quantitative standard or qualitative consideration set forth in the Rule 4000 Series that the issuer has failed to satisfy] *that meets the requirements of Rule 4811.* The NASD Board may affirm, modify or reverse the Listing Council Decision and may remand the matter to the Listing Council, Listing Qualifications Panel, or [Nasdaq] staff *of the Listing Departments* with appropriate instructions. *Unless the matter is remanded, the NASD Board's* [This] decision represents the final action of the Association and [will] *shall* take immediate effect unless it specifies to the contrary.

(d) If the NASD Board declines to conduct a discretionary review or withdraws its call for review, the issuer [will] *shall* be promptly provided with written notice that the Listing Council Decision represents the final action of the Association.

4810 [4860]. Application to the Commission for Review

Any issuer aggrieved by a final action of the Association may make application for review to the Commission in accordance with Section 19 of the Act.

4811 [4870]. Record on Review; *Contents of Decisions*

(a) Documents in the written record may consist of the following items, as applicable: correspondence between Nasdaq and the issuer, the issuer's public filings, information released to the public by the issuer, and any written submissions or exhibits submitted by either the issuer or the Listing [Qualifications] Departments [or the Listing Investigations Department], including any written request for an [extension or] exception as permitted in Rule *4802(b)* [4810(b)] and any response thereto. Any additional information requested from the issuer *or staff of the Listing Departments* by the Listing Qualifications Panel, Listing Council, or NASD Board as part of the review process [will] *shall* be included in the written record. The written record [will] *shall* be supplemented by the transcript of any hearings held during the review process and each decision issued. At each level of review under this Rule 4800 Series, the issuer [will] *shall* be provided with a list of documents in the written record, and a copy of any documents included in the record that are not in the issuer's possession or control, at least three calendar days in advance of the deadline for issuer submissions, unless the issuer waives such production.

(b) In addition to the documents described in paragraph (a) [above], if *any additional information* [the issuer's bid price, market makers, or any information that the issuer releases to the public,] is considered as permitted in Rule [4810] *4802(c)*, that information, and any written submission addressing the significance of that information, [will] *shall* be made part of the record.

(c) If additional issues arising under the Rule 4000 Series are considered, as permitted in Rule *4802* [4810], the notice of such consideration and any response to such notice [will] *shall* be made a part of the record.

(d) Each Panel Decision, Listing Council Decision, and decision of the NASD Board shall include:

(1) A statement describing the procedural history of the proceeding, including investigations or reviews undertaken by the Listing Departments;

(2) The quantitative standard or qualitative consideration set forth in the Rule 4000 Series that the issuer is alleged to have failed to satisfy;

(3) A statement setting forth the findings of fact with respect to the issuer;

(4) The conclusions of the Adjudicatory Body as to whether the issuer has failed to satisfy the quantitative standards or qualitative considerations set forth in the Rule 4000 Series, (5) A statement of the Adjudicatory Body in support of the disposition of the principal issues raised by the issuer in the proceeding, and, if applicable, any exception to the Rule 4000 Series as permitted by Rule 4802 (b) and the rationale therefor.

4812 [4875]. Document Retention Procedures

Any document submitted to *Nasdaq or the NASD* [the Association] in connection with a Rule 4800 proceeding [that is not made part of the record will] *shall* be retained [by the Association until the date upon which the Rule 4800 Series proceeding decision becomes final including, if applicable, upon conclusion of any review by the Commission or a federal court] *in accordance with applicable record retention policies.*

4813 [4880]. Delivery of Documents

Delivery of any document under this Rule 4800 Series by an issuer, *Nasdaq, or the NASD* [or by the Association] may be made by hand delivery to the designated address, by facsimile to the designated facsimile number and overnight courier to the designated address, or *to an issuer* by e-mail if the issuer consents to such method of delivery. Delivery [will] *shall* be considered timely if hand delivered prior to the relevant deadline or upon being e-mailed or faxed and/or sent by overnight courier service prior to the relevant deadline. If an issuer has not specified a facsimile number or street address, delivery [will] *shall* be made to the last known facsimile number and street address. If an issuer is represented by counsel or a representative, delivery [will] *shall* be made to the counsel or representative.

4814 [4885]. Computation of Time

(a) In computing any period of time under the Rule 4800 Series, the day of the act, event, or default from which the period of time begins to run is not to be included. The last day of the period so computed is included, unless it is a Saturday, Sunday, federal holiday, or NASD holiday in which event the period runs until the end of the next day that is not a Saturday, Sunday, federal holiday or NASD holiday.

(b) In the event that the Office of General Counsel determines that notice required to be provided under the Rule 4800 Series was not properly given or that other extenuating circumstances exist, the Office of General Counsel shall adjust the periods of time provided by such rules for the filing of written submissions, the scheduling of hearings, or the performance of other procedural actions by the issuer or an Adjudicator, as applicable, to allow the issuer or the Adjudicator the time contemplated by these rules.

(c) An issuer may waive any notice period specified by the Rule 4800 Series.

4815 [4890]. [Prohibited Communications] *Ex Parte Communications; Separation of Adjudicators*

(a) *Ex Parte Communications*

(1) Unless on notice and opportunity for [the appropriate Nasdaq] staff *of the Listing Departments* and the issuer to participate, a [representative] *member of the staff* of the [Association] *Listing Departments* involved in reaching a Staff Determination, *counsel to the Listing Departments,* [or] an issuer, *or* counsel to or representative of an issuer, shall not make or knowingly cause to be

made *an ex parte* communication relevant to the merits of a proceeding under this Rule 4800 Series [(a ''Prohibited Communication'')] to *an Adjudicator* [any member of the Listing Qualifications Panel or the Listing Council, to any Governor of the NASD Board] who is participating in [or advising in the] *a* decision [in] *with respect to* that proceeding, or to any [Association] *Advisor* [employee who is participating or advising in the decision of these individuals] *with respect to that proceeding.*

[(b)] *(2) No Adjudicator* [Listings Qualifications Panel members, Listing Council members, Governors of the NASD Board and Association employees] who *is* [are] participating in [or advising in the] *a* decision [in] *with respect to* a proceeding under this Rule 4800 Series, *and no Advisor with respect to such a proceeding,* shall [not] make or knowingly cause to be made a*n ex parte communication relevant to the merits of that proceeding* [Prohibited Communication] to an issuer, counsel to or representative of an issuer, [or] a [representative of the Association] *member of the staff of the Listing Departments* involved in reaching a Staff Determination, *or counsel to the Listing Departments.*

[(c)] *(3)* [If a] *An Adjudicator or Advisor who is participating in or advising with respect to a proceeding who receives, makes, or knowingly causes to be made an ex parte communication relevant to the merits of a proceeding* [Prohibited Communication is made, received, or caused to be made, the Association will] *shall* place a copy of it, or its substance if it is an oral communication, in the record of the proceeding. [The Association will permit Nasdaq staff] *Staff of the Listing Departments* or the issuer, as applicable, *shall be permitted* to respond to the *ex parte communication* [Prohibited Communication], and *any such response* [will place any response] *shall be placed* in the record of the proceeding. [(d) If the issuer submits a proposal to resolve matters at issue in a Rule 4800 Series proceeding, that submission will constitute a waiver of any claim that Association communications relating to the proposal were Prohibited Communications.]

(b) Separation of Adjudicators

(1) Members of a Listing Qualifications Panel and their Advisors who are participating in a proceeding under this Rule 4800 Series are prohibited from making communications relevant to the merits of such proceeding to members of the Listing Council or the NASD Board or their respective Advisors.

(2) Members of the Listing Council and their Advisors are prohibited from making communications relevant to the merits of a proceeding under this Rule 4800 Series to members of a Listing Qualifications Panel who are participating in such proceeding or their Advisors, or members of the NASD Board or their Advisors.

(3) Members of the NASD Board and their Advisors are prohibited from making communications relevant to the merits of a proceeding under this Rule 4800 Series to members of a Listing Qualifications Panel who are participating in such proceeding or their Advisors, or members of the Listing Council or their Advisors.

(4) An Adjudicator or Advisor who is participating in or advising with respect to a proceeding who receives, makes, or knowingly causes to be made a communication prohibited by paragraphs (b)(1)–(3) of this Rule shall place a copy of it, or its substance if it is an oral communication, in the record of the proceeding. Staff of the Listing Departments and the issuer shall be permitted to respond to the communication, and any such response shall be placed in the record of the proceeding.

4816. Recusal or Disqualification

(a) No person shall serve as a member of a Listing Qualifications Panel, or participate as a member of the Listing Council, the NASD Board, or the staff of the Listing Departments, in a matter as to which he or she has a conflict of interest or bias, or circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the person shall recuse himself or herself, or shall be disqualified as follows:

(1) NASD Board

The Chair of the NASD Board shall have authority to order the disqualification of a Governor, and a majority of the NASD Board excluding the Chair of the NASD Board shall have authority to order the disqualification of the Chair.

(2) Listing Council

A Chair of the Listing Council shall have authority to order the disqualification of a member of the Listing Council, and a majority of the Listing Council excluding any Chairs of the Listing Council shall have authority to order the disqualification of a Chair of the Listing Council.

(3) Staff of Listing Departments; Panelist of Listing Qualifications Panel

The General Counsel of Nasdaq shall have authority to order the disqualification of (A) a member of the staff of the Listing Departments reviewing the qualifications of an issuer, or (B) a member of a Listing Qualifications Panel.

(b) At least five days prior to any proceeding under the Rule 4800 Series, the issuer shall provide the Hearings Department or the Advisor to the Listing Council or the NASD Board, as applicable, with names and biographical information of each person that will appear on behalf of the issuer at the proceeding, and the Hearings Department or such Advisor, as applicable, shall provide the issuer with names and biographical information of the Adjudicators for the proceeding; provided, however, that with respect to proceedings before the Listing Council or the NASD Board, the Advisor to the respective Adjudicatory Body may post names and biographical information of each Adjudicator on a publicly available website in lieu of providing them directly to the issuer.

(c) An issuer or the staff of the Listings Departments may file a request to disqualify an Adjudicator. Such a request shall be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the Adjudicator's fairness might reasonably be questioned, and shall be accompanied by an statement setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the party learned of those facts. Such a request shall be filed (1) not later than two days after the party was provided with the name and biographical information of the Adjudicator, or (2) if the name and biographical information of the Adjudicator has been posted on a website, not later than two days after the issuer requested Listing Council review or received notice of discretionary review by the Listing Council or the NASD Board. A request for disqualification of an Adjudicator shall be decided by the party with authority to order disqualification of such Adjudicator, who shall promptly investigate whether disqualification is required and issue a written response to the request.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on

the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing a range of rule changes to enhance, clarify, and increase the transparency of its procedures for denying or limiting initial or continued listing on The Nasdaq Stock Market. Nasdaq believes that these changes will increase the objectivity and consistency of listing decisions, clarify the roles of staff, counsel, and adjudicators throughout the process, and promote public confidence in Nasdaq.

Under Nasdaq's procedures to deny or limit listing, Nasdaq's Listing Qualifications Department and Listing Investigations Department (''Listing Departments'') initiate a proceeding by issuing a written determination to the issuer when it fails to meet Nasdaq's listing standards (''Staff Determination Letter''). The issuer may then request a hearing before a Listing Qualifications Panel (''Panel''). The hearing is conducted by two panelists, drawn from a pool of individuals who are independent of Nasdaq and who have been approved to perform this function by the Nasdaq Board. An attorney from the Nasdaq Office of Qualification Hearings provides advice to the panelists and prepares a decision at their direction (''Panel Decision'').

The issuer may appeal the Panel Decision to the Nasdaq Listing and Hearing Review Council (''Listing Council''). The Listing Council is composed of individuals independent of Nasdaq and previously approved by the Nasdaq Board. In addition, the Listing Council has the right to call for review of a Panel Decision, whether or not the issuer appeals it. An attorney from the Nasdaq Office of Appeals and Review advises the Listing Council and prepares a decision at its direction. The final decision is subject to review by the NASD Board and the Commission.

Discretion to Grant Exceptions

NASD Rule 4810(b) currently provides that the Association (*i.e.*, NASD, including, for this purpose, Nasdaq) may grant ''extensions or exceptions'' to listing standards upon written request of the issuer.[5] Nasdaq believes that such discretion is necessary to ensure that investors are not harmed by premature delisting of companies that have presented viable plans to regain compliance with listing standards. Nevertheless, Nasdaq has concluded that the rigor of the listing review process could be enhanced by defining more clearly the decision-makers authorized to exercise discretion to grant an exception, how the exception is documented, and when the exception must expire. Nasdaq believes these changes would enhance the transparency and objectivity of Nasdaq's decisions and help promote public confidence in the quality of Nasdaq's listed companies.

First, Nasdaq is proposing to eliminate the phrase ''extension or exception'' and replace it with the term ''exception,'' which is the term commonly used by Nasdaq staff and Adjudicators when referring to relief granted to allow an issuer the opportunity to regain compliance with a listing standard. As described below, the time periods during which an exception may be in effect will be subject to time limits.

Second, new NASD Rule 4803 would provide that upon determining that a listing requirement may not be satisfied, the staff of a Listing Department would provide written notice of the deficiency. Depending on the nature of the deficiency, the notice would either take the form of a Staff Determination Letter, which would initiate proceedings to deny or limit listing, or would notify the issuer of the deficiency and provide the issuer with 15 days to submit a plan to regain compliance with the listing standard. The staff would then be required either to initiate proceedings or to grant the issuer up to 105 days to regain compliance with the listing standard.[6] The 105-day period would be measured from the date of the initial notice of non-compliance. If the issuer does not regain compliance within the time period provided, the Listing Department staff would immediately initiate proceedings to deny listing.

The staff's authority to grant an exception under the NASD rule would not apply, however, to quantitative listing standards that, by their terms, specify a period during which an issuer may seek to regain compliance before being subject to delisting.[7] Upon the expiration of such specified grace periods, proceedings would be commenced immediately. Similarly, the staff's authority would not extend to qualitative listing standards that are considered fundamental to an investor's participation in the company or to Nasdaq's relationship with the company.[8] The staff's authority would apply, however, to quantitative standards that do not contain an explicit grace period[9] and to all other qualitative standards.[10]

If a review a Staff Determination is pending and either of the Listing Departments identifies the existence of one or more additional deficiencies with

[5] Securities Exchange Act Release No. 41367 (May 4, 1999), 64 FR 25942 (May 13, 1999) (SR–NASD–98–88).

[6] If an issuer is already the subject of a written determination by a Listing Department to limit or prohibit the initial or continued listing of an issuer's securities pursuant to Rule 4804 (''Staff Determination''), the Listing Department staff would not provide the issuer with the opportunity to submit a plan, nor could the staff grant an exception, with respect to the new deficiency. Rather, the new deficiency would be considered by the relevant Adjudicatory Body as provided by NASD Rule 4810(e) (redesignated as NASD Rule 4802(d)).

[7] These standards include the requirements for number of market makers (NASD Rules 4310(c)(1), 4320(e)(1), and 4450(a)(6), (b)(6), and (h)(5)); market value of publicly held shares (NASD Rules 4310(c)(7) and 4450(a)(2), (b)(3), and (h)(2)); market value of listed securities (NASD Rules 4310(c)(2), 4320(e)(2), and 4450(b)(1)); and bid price (NASD Rules 4310(c)(4) and 4450(a)(5), (b)(4), and (h)(3)).

[8] These standards include the requirements to provide Nasdaq with responsive and accurate information (NASD Rule 4330); file periodic reports (NASD Rules 4350(b) and 4360(b)); hold annual meetings and solicit proxies (NASD Rules 4350(e) and (g) and 4360(e) and (g)); and execute a listing agreement (NASD Rules 4350(j) and 4360(h)).

[9] These standards include the requirements for levels of stockholders' equity (NASD Rules 4310(c)(2), 4320(e)(2), and 4450(a)(3)); number of publicly held shares (NASD Rules 4310(c)(7), 4320(e)(5), and 4450(a)(1), (b)(2), and (h)(1)); number of round lot stockholders (NASD Rules 4310(c)(6), 4320(e)(4), and 4450(a)(4), (b)(5), and (h)(4)); net income (NASD Rules 4310(c)(2) and 4320(e)(2)); and total assets and total revenue (NASD Rule 4450(b)(1)(B)). In connection with the net income and total assets and total revenue standards, Nasdaq is proposing to adopt NASD IM–4803 to make it clear that a plan of compliance submitted under NASD Rule 4803 with respect to a net income or total assets and total revenue deficiency must present a viable plan for achieving full compliance with the rules, which require stated levels during completed fiscal years as demonstrated through audited financial statements. Thus, a plan may not rely upon projections that an issuer would achieve full compliance at a time after an exception period has elapsed, nor may it rely upon partial year performance to demonstrate the possibility of future compliance. An issuer may, however, submit a plan to gain compliance in the near term with alternative listing standards relating to stockholders' equity or market value of listed securities, which are measured at a point in time rather than with reference to completed fiscal years.

[10] These standards include the requirements for independent directors and audit committees in circumstances where the cure periods contained in the rules are not applicable (NASD Rules 4350(c) and (d) and 4360(c) and (d)); quorums (NASD Rules 4350(f) and 4360(f)); conflict of interest review (NASD Rules 4350(h) and 4360(i)); shareholder approval (NASD Rule 4350(i)); peer review (NASD Rule 4350(k)); code of conduct (NASD Rule 4350(n)); and voting rights (NASD Rule 4351).

respect to the issuer, the Listing Department shall prepare and provide to the issuer a Staff Determination with respect to the additional deficiencies. If the new Staff Determination is issued prior to a Panel hearing with respect to the original Staff Determination, the issuer would be given the opportunity to present its views with respect to the additional deficiencies at the Panel hearing. If the new Staff Determination is issued after a Panel hearing with respect to the original Staff Determination, the issuer may present its views with respect to the additional deficiencies in writing. The additional deficiencies would then be reviewed as provided under NASD Rule 4810(e) (redesignated as NASD Rule 4802(d)). Specifically, if the Panel hearing had been held but the Panel Decision had not yet been issued, the additional deficiencies would be adjudicated on the written record and reflected in the Panel Decision. If the Panel Decision had been issued, the additional deficiencies would be adjudicated by the Listing Council.

When granting an exception pursuant to NASD Rule 4803, the staff of the Listing Department shall prepare a written record describing the basis for the exception and shall provide notice of the terms of the exception to the issuer. Similarly, if the staff of the Listing Department determines not to grant an exception, the Staff Determination shall include a description of the basis for denying the request for an exception.

Third, Nasdaq proposes to amend NASD Rule 4810(b) (redesignated as NASD Rule 4802(b)) to provide that a Panel may grant an exception from any of the listing standards set forth in the NASD Rule 4000 Series for up to 90 days from the date of its decision, and the Listing Council may grant an exception for up to 60 days from the date of its decision. No other exceptions would be permitted. As provided by proposed NASD Rule 4811(d)(5), any exception granted by a Panel or the Listing Council must be incorporated into a formal written decision, thereby ensuring that the exception is subject to appeal or call for review.

Finally, Nasdaq proposes to amend NASD Rule 4830 (redesignated as NASD Rule 4806) to provide that if a Panel grants an exception for an equity or filing deficiency (NASD Rules 4310(c)(2) and (c)(14), 4320(e)(2) and (e)(12), and 4350(b)), the Panel will continue to monitor the issuer for a one-year period following the date it achieves compliance, to assure the issuer's ability to sustain long-term compliance with the requirements. If the issuer again falls out of compliance during the one-year period, the Panel would promptly conduct a hearing with respect to the new failure, thereby ensuring a speedier disposition of the issuer's status.[11] The Panel's monitoring authority would not permit the Panel to authorize an exception beyond the time limits described above; rather, the monitoring period would commence only if the issuer achieves compliance within the 90-day exception period authorized by NASD Rule 4810. Moreover, notwithstanding the Panel's retention of jurisdiction, the Panel Decision would still be subject to review by the Listing Council, which could divest the Panel of jurisdiction by reversing the decision to grant the exception and delisting the issuer.

Exception to Shareholder Approval Requirement

Apart from the authority to grant exceptions in the manner described above, NASD Rule 4350(i), which requires shareholder approval of certain enumerated issuances of securities, allows the staff of the Listing Qualifications Department to grant an exception from the application of the requirement to a specific issuance in circumstances where delay would seriously jeopardize an issuer's financial viability, the issuer's audit committee (or comparable body of its board of directors) approves reliance, and the issuer provides notice to shareholders of the decision not to seek their approval. An exception granted under this NASD Rule is permanent as applied to a specified issuance. Nasdaq proposes to amend NASD Rule 4350(i)(2) to require that a board committee approving reliance must be composed of independent, disinterested directors, to specify the content of the issuer's notice to shareholders, to require the issuance of a press release by the issuer, and to stipulate that communications between the issuer and the Listing Qualifications Department regarding the exception must be in writing.

Public Interest Authority

NASD Rule 4300 provides Nasdaq with broad discretionary authority to deny initial listing to issuer's securities, impose additional or more stringent criteria on initial or continued listing of an issuer's securities, or delist an issuer's securities based on a determination that initial or continued listing is inadvisable or unwarranted. This authority is used primarily to address concerns about issuers who meet enumerated criteria for listing but whose management has been involved in unlawful activity or ethical lapses that could undermine investor confidence in Nasdaq securities. Nasdaq proposes to amend the rule to make it clear that, in all instances in which the Nasdaq staff exercises its authority under NASD Rule 4300, the Listing Departments must issue a Staff Determination under NASD Rule 4815 (redesignated as NASD Rule 4804). This is so that issuers may seek Panel review of the decision, and the use of the authority by an Adjudicatory Body shall be reflected in its written decision.

Nasdaq also proposes to supplement the rule with interpretive material that explains the circumstances under which the authority is generally used. The interpretive material explains the factors used by Nasdaq in evaluating whether the regulatory misconduct of an individual associated with an issuer should be used as a basis to deny initial or continued listing, as well as factors that may serve to mitigate public interest concerns under the NASD Rule 4300. The interpretive material also clarifies that NASD Rule 4300 does not provide a basis for granting exceptions from listing criteria.

Finally, Nasdaq is deleting provisions of NASD Rules 4330, 4350, and 4410 relating to additional or more stringent listing criteria[12] and including the text of the deleted provisions in the NASD Rule 4300 and the new interpretive material in order to consolidate related provisions under a single rule and to make it clear that Nasdaq's authority under NASD Rule 4300 covers the factors currently described in the deleted provisions. These factors include an issuer's bankruptcy filing, the issuance of a disclaimer opinion with respect to an issuer's financial statements, an issuer's past corporate governance activities, the absence of required financial statement certification, and any other factors that would support a determination that denial of listing is necessary to prevent fraudulent or manipulative acts or practices, to promote just and equitable

[11] The purpose of accelerated review would generally be to allow an issuer that is repeatedly deficient in these areas to be delisted more quickly. The rule focuses on the equity requirement, because, in Nasdaq's experience, it has been an area in which deficient issuers that regain compliance nevertheless can quickly fall out of compliance and the filing requirement because it is so fundamental to investors' understanding of an issuer.

[12] Nasdaq is also deleting NASD Rules 4330(d) and 4410(d), which contain language regarding exceptions, in order to consolidate all provisions regarding exceptions in the NASD Rule 4800 Series. Similarly, NASD Rules 4330(c) and (f) are being redesignated as NASD Rules 4330 and 4340, respectively. The substance of NASD Rule 4330(b) is being replaced by NASD Rule 4803, and NASD Rule 4330(e) is being relocated to NASD Rule 4802(f).

principles of trade, or to protect investors and the public interest.

Supplementing the Record

NASD Rule 4810(c) and (d) (redesignated as NASD Rule 4802(c)) allow an Adjudicatory Body at each level of review to request additional information from the issuer or consider public information. However, the NASD rules at each level of review are not parallel with respect to other aspects of an Adjudicatory Body's authority to supplement the record on its own motion. For example, the NASD Board may request additional information from Nasdaq staff under NASD Rule 4850 (redesignated as NASD Rule 4809), but the Listing Council may not. Nasdaq proposes to amend NASD Rule 4802(c) to provide an Adjudicatory Body at each level of review with broad authority to supplement the record on its own motion, subject to written notice to the issuer and the Listing Departments and an appropriate opportunity to respond.

Nasdaq also proposes to amend NASD Rule 4875 (redesignated as NASD Rule 4812) to provide that all documents submitted to Nasdaq or NASD in connection with a NASD Rule 4800 Series proceeding shall be retained in accordance with applicable record retention policies (*i.e.*, at least five years unless a shorter period is reflected in a Commission-approved document destruction plan under Rule 17a–6 of the Act).[13] The current rule language provides that documents submitted in connection with a proceeding that are not part of the record would only be retained until the conclusion of the proceeding.

Procedural Deadlines

The NASD Rule 4800 Series establish various time frames during which an issuer or an Adjudicatory Body is required to take certain actions. For example, NASD Rule 4830(c) (redesignated as NASD Rule 4806(b)) provides that an issuer may request a Listing Council review of a Panel Decision within 15 days of the date of the decision, and the Listing Council may call the decision for review within 45 days of the date of the decision.

Nasdaq proposes to amend NASD Rule 4885 (redesignated NASD Rule 4814) to provide that, if notice has not been properly given or if other extenuating circumstances exist, the Nasdaq Office of General Counsel may equitably adjust the time period provided by the rules for the filing of written submissions, the scheduling of hearings, or the performance of other procedural actions by the issuer or the Adjudicatory Body to help ensure fairness in the process. Thus, for example, if an issuer does not receive notice of the Panel Decision until a date well after its issuance, the Nasdaq Office of General Counsel could determine that the issuer would be provided additional time to request a Listing Council review.

NASD Rule 4885 would also be amended to provide that an issuer may waive any notice period specified by the NASD Rule 4800 Series. For example, proposed NASD Rule 4816(b) provides that an issuer shall be provided at least five days' notice of the names and biographies of persons that will serve on a Listing Panel. An issuer would be permitted to waive such notice.

Listing Council Subcommittees

The current practice of the Listing Council is for a subcommittee consisting of two members of the Listing Council to review the complete written record of an appeal and recommend a disposition of the matter. The remainder of the Listing Council reviews a summary of the record prepared by a staff advisor to the Listing Council. The full Listing Council then considers the subcommittee's recommendation and may accept, reject, or modify it. The practice is followed because the record is invariably voluminous, and requiring a full review of the entire record by each Listing Council member would impose an unreasonable burden on Listing Council members. The use of subcommittees allows for a comprehensive review by a portion of the Listing Council, as well as a review of the substance of the record by the entire Listing Council. Nasdaq is amending NASD Rule 4840 (redesignated NASD Rule 4807) to reflect explicitly the use of subcommittees.

Content and Approval of Decisions

Nasdaq proposes to amend NASD Rule 4870 (redesignated NASD Rule 4811) to establish explicit standards for the content of decisions by the Adjudicatory Bodies. Each decision shall include: (1) A statement describing the procedural history of the proceeding; (2) the listing standard that the issuer is alleged to have failed to satisfy; (3) a statement setting forth the findings of fact with respect to the issuer; (4) the conclusions of the Adjudicatory Body as to whether the issuer has failed to satisfy listing standards; and (5) a statement of the Adjudicatory Body in support of the disposition of the principal issues raised by the issuer in the proceeding, and, if applicable, any exception granted and the rationale therefor. Nasdaq believes that these requirements will ensure that decisions are clear and complete on their face, properly cite applicable rules, contain a thorough analysis supporting the Adjudicatory Body's conclusions, and clearly describe the scope of, and basis for, any exception granted.

Nasdaq also proposes to amend the rules relating to issuance of decisions to require explicitly the documentation of affirmative approval of decisions by each Adjudicator required to provide approval (*i.e.*, each Panel member under NASD Rule 4806(b), a majority of Panel members under NASD Rule 4806(c), and a majority of the Listing Council or the NASD Board). However, the rule will not specify the particular means of documenting approval. Nasdaq contemplates that approval via physical signature, e-mail, or fax would all be acceptable. Having a variety of options for documenting such approval will help expedite issuance of the final decision.

Ex Parte Communications

Under NASD Rule 4890 (redesignated as NASD Rule 4815), the staff of the Listing Departments and the issuer are prohibited from communicating about the merits of a proceeding with the Panel, the Listing Council, the NASD Board, and any staff advising them. Nasdaq is proposing to make several non-substantive amendments to the rule to conform more closely to NASD Rule 9143, the analogous NASD Code of Procedure rule pertaining to ex parte communications, and to eliminate the use of ambiguous terms such as ''appropriate Nasdaq staff.'' However, Nasdaq is omitting the portion of NASD Rule 9143 that allows a party's claim to be ''dismissed, denied, disregarded, or otherwise adversely affected by reason of'' an ex parte communication. Nasdaq believes that the policies underlying its listing standards will best be served by a full and open review of all issues pertaining to an issuer's qualifications to list. Accordingly, although the prohibition on ex parte communications will be strictly enforced, and Adjudicators or Nasdaq staff engaging in such communications may be subject to recusal, disqualification, or removal in the case of Adjudicators or recusal, disqualification, or personnel action in the case of Nasdaq staff, Nasdaq does not believe that the fact of an ex parte communication should serve as the basis for denying listing to a qualified issuer or allowing an unqualified issuer to remain listed. Rather, as provided in NASD Rule 4890(c) (redesignated NASD Rule 4815(a)(3)) and NASD Rule 4816, in a listing proceeding the appropriate

[13] 17 CFR 240.17a–6.

remedy is disclosure of the substance of the communication, a full opportunity for affected parties to respond, and the possible recusal or disqualification of an Adjudicator receiving an ex parte communication.

In keeping with this view, Nasdaq is also proposing to delete NASD Rule 4890(d), which provides that an issuer's submission of a proposal to resolve matters at issue in a proceeding constitutes a waiver of any claims regarding ex parte communications relating to the proposal. Since the fact of an ex parte communication does not provide a basis for denying listing to an otherwise qualified issuer, there is no need to construe a submission of a proposal as a waiver.

The current NASD Rule 4800 Series does not prohibit communication among the Panel, Council, NASD Board, and their staff advisors regarding the merits of a proceeding, although in practice such communications are avoided. In contrast, in NASD disciplinary proceedings, which have a similarly structured multi-level review by outside bodies, the rules prohibit the various adjudicators from engaging in such communications with one another. Nasdaq is proposing to adopt rules that follow the NASD model to increase the separation and objectivity of Adjudicators at each level of a proceeding. It should be noted, however, that Nasdaq will not construe the prohibition to apply to discussions concerning policies of general applicability.

Recusals and Disqualifications

Nasdaq proposes to make its internal procedures for handling recusals more transparent by incorporating them into a rule that follows the model of NASD Rule 9160. Proposed NASD Rule 4816 will provide that Adjudicators and Listing Department staff must recuse themselves from matters as to which they have a conflict of interest or bias or if circumstances otherwise exist where their fairness might reasonably be questioned. In addition, the rule identifies persons with authority to order disqualifications of Adjudicators and staff.[14] Finally, the new rule establishes procedures for disclosing the names and biographical information of Adjudicators and issuer representatives in advance of proceedings and allows an issuer or a staff of the Listing Departments to file a formal request for disqualification.

Other Changes

In addition to the foregoing changes, Nasdaq is also proposing the following minor miscellaneous changes to the rules:

- Adding NASD Rule 4802(e) to require the Listing Departments or the advisor to an Adjudicatory Body, as appropriate, to document the date on which decisions are implemented.
- Adding a new definitions section (NASD Rule 4801) to make the NASD rules easier to understand and administer.
- Conforming Nasdaq's existing disclosure time frames to those of the Commission's new Form 8–K requirements (NASD IM–4120–2 and NASD Rule 4804) and adding a new disclosure requirement upon receipt of a notice from a Listing Department under NASD Rule 4803(a) that the issuer does not meet a listing standard set forth in the NASD Rule 4000 Series.
- Using the term ''shall'' in rules that impose a mandatory duty on Nasdaq or any other person and making other minor or conforming edits to improve the clarity of the rules.
- Deleting references in NASD Rule 4815 (redesignated NASD Rule 4804) to phone numbers of specific Nasdaq departments. Nasdaq believes that such phone numbers should be provided through Web sites rather than through a rule that cannot be amended without a filing to the Commission.
- Amending NASD Rule 4830(d) (redesignated NASD Rule 4806(c)) to clarify that a second Listing Qualifications Panel convened after a first Panel fails to reach a unanimous decision may act through a majority of the Panel.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act[15] in general and with Section 15A(b)(6) of the Act[16] in particular in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq believes that these changes will increase the objectivity and transparency of decisions to deny or limit listing, clarify the roles of staff, counsel, and adjudicators throughout the process, and promote public confidence in The Nasdaq Stock Market.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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–NASD–2004–125 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission,

[14] Specifically, the Chair of the NASD Board has the authority to order disqualification with respect to an NASD Governor, a majority of the NASD Board excluding the Chair with respect to the Chair, a Chair of the Listing Council with respect to a member of the Listing Council, a majority of the Listing Council excluding Chairs with respect to a Chair, and the General Counsel of Nasdaq with respect to a member of the staff of the Listing Departments or a member of Listing Qualifications Panel.

[15] 15 U.S.C. 78*o*–3.

[16] 15 U.S.C. 78*o*–3(b)(6).

450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–125. 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. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–125 and should be submitted on or before March 25, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–873 Filed 3–3–05; 8:45 am]

BILLING CODE 8010–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51273; File No. SR–NYSE–2004–031]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendments No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 by the New York Stock Exchange, Inc. Relating to Appointments to the NYSE's Board of Arbitration and Other Changes to the NYSE's Arbitration Program

February 28, 2004.

I. Introduction

On June 21, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to amendments to NYSE Rules 633, 634, and 635 relating to the administration of the Exchange's arbitration program. On October 29, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on January 4, 2005.[4]

On January 18, 2005, the Exchange filed Amendment No. 2 to the proposed rule change, which proposed certain technical changes to the rule text.[5] The Commission received one comment letter in response to the proposed rule change.[6] For the reasons discussed below, the Commission is approving the proposed rule change as amended.

II. Description of the Proposed Rule Change

A. Description of the Proposal

The proposed rule change consists of amendments to NYSE Rules 633, 634, and 635 concerning appointments of members of the Board of Arbitration, appointments to panels of securities and non-securities arbitrators, and the appointment of the Director of Arbitration of the Exchange. NYSE Rule 633 governs the appointment of a Board of Arbitration, whose membership consists of current or former members of the Exchange, allied members, or officers of member corporations. Members of the Board of Arbitration decide controversies between parties who are members of the Exchange, allied members, member firms or member corporations. Currently, the Chairman of the NYSE Board appoints the members of the Board of Arbitration annually. As proposed, the Chairman will no longer appoint the members of the Board of Arbitration. Rather, the Director of Arbitration will do so, and she or he will do so on an ongoing basis rather than annually. Moreover, under the proposal, members of the Board of Arbitration may not be members of the Board of Executives.[7] Currently, under NYSE Rule 633, they may not be members of the Board of Directors.[8]

NYSE Rule 634 provides for the appointment of securities and non-securities arbitrators to standing panels of arbitrators available to decide customer disputes. Arbitration panels for individual disputes are typically composed of two non-securities arbitrators and one securities arbitrator.[9] Under the proposal, these arbitrators would be appointed by the Director of Arbitration rather than the Chairman of the NYSE Board, as is currently the case.[10] The proposal also would remove a provision stating that the NYSE will keep separate arbitration panels to serve within or outside of the New York metropolitan area because the provision

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Karen Kupersmith, Director of Arbitration, NYSE, to Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, dated October 29, 2004.

[4] Exchange Act Release No. 50939 (Dec. 28, 2004), 70 FR 00420 (Jan. 4, 2005).

[5] Amendment 2, submitted electronically to the Commission on January 18, 2005 and signed by Mary Yeager, Assistant Corporate Secretary.

[6] Letter to Jonathan G. Katz, Secretary, Commission, from Robert S. Clemente, Esq., dated January 24, 2005, available online at *http://www.sec.gov/rules/sro /nyse/nyse200431/rsclemente4506.htm.*

[7] The NYSE Board of Executives, which includes the Chairman of the NYSE Board and investors and representatives from member organizations, advises the Chief Executive Officer of the Exchange in his or her management of the operations of the Exchange. *See* NYSE Constitution, Article V, Section 1.

[8] Amendment No. 2, submitted on January 18, 2005, proposes a technical correction to the text of NYSE Rule 633, as follows. A proposed deletion appears in [brackets].

The Director of Arbitration shall appoint a Board of Arbitration to be composed of [such number of] present or former members, allied members and officers of member corporations of the Exchange who are not members of the Board of Executives.

[9] A securities arbitrator is someone ''engaged in or retired from the securities business'' and a non-securities arbitrator is someone ''not engaged in the securities business.'' *See* NYSE Rule 634.

[10] As permitted by the NYSE Constitution, this authority has been delegated to the Vice President, Arbitration and Hearing Board. NYSE stated in its proposal that, in practice, arbitration department management routinely appoints new individuals to the rosters of arbitrators subject to the oversight of the Vice President.

does not reflect current Exchange practice.[11]

Currently, NYSE Rule 635 provides that the Chairman of the NYSE Board appoints the Director of Arbitration. In light of a recent corporate restructuring at the Exchange,[12] the proposal instead provides that the Chief Regulatory Officer will designate the Director of Arbitration, subject to the approval of the NYSE's Regulatory Oversight Committee.[13]

B. Comment Summary

The proposed rule change was published for comment in the **Federal Register** on January 4, 2005, and the Commission received one comment letter in response.[14] The commenter opposed the proposal. With regard to the Exchange's proposed changes to Rules 633 and 634, the commenter contended that the NYSE should separate itself and its management from the process of appointing arbitrators by implementing a system of review and oversight of the arbitrator appointment process. The commenter opposed delegating the arbitrator selection process to the Director of Arbitration.

With regard to Rule 635, the commenter stated that the rule should be amended to specify that the appointment of the Director of Arbitration by the Chief Regulatory Officer must be subject to the review and approval of the Regulatory Oversight Committee.

III. Discussion and Findings

After careful consideration of the proposal and the comment that was received, 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.[15] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act in that it promotes just and equitable principles of trade by helping to ensure that members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.[16]

The NYSE is updating its arbitration selection process to reflect more accurately the way in which arbitrators are selected. Specifically, as amended, NYSE Rule 633 would rest the obligation of selecting members of the Board of Arbitration with the Director of Arbitration, who is the NYSE staff person responsible for recruiting potential arbitrators. Similarly, NYSE Rule 634, as amended, would authorize the Director of Arbitration to appoint arbitration panel members. The Director of Arbitration reports to the Chief Regulatory Officer, who in turn reports to the Regulatory Oversight Committee and NSYE Board.

In response to the comment received, the Commission believes that the proposed rule change provides appropriate oversight over the appointment of arbitrators.[17] Important functions of the Exchange are routinely delegated to the Exchange staff. Nevertheless, the Board of Directors maintains the ultimate authority, and the responsibility, to ensure that the actions of the Exchange staff are carried out in a manner that is consistent with the federal securities laws.[18] Similarly, although the proposed text of Rule 635 does not expressly require that the Regulatory Oversight Committee review the Chief Regulatory Officer's appointment of a Director of Arbitration, as the commenter recommended, this appointment is subject to the oversight of the Regulatory Oversight Committee as a function of the Exchange's routine corporate governance structure.[19] Therefore, we believe the proposal sufficiently addresses the commenter's concerns.

The Commission finds good cause for approving Amendment No. 2 before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The proposed Amendment No. 2 makes necessary technical corrections to the rule text and does not alter the substantive content of the rules.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2004–031 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2004–031. 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 its 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 Amendment No. 2 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 NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–031 and should be submitted on or before March 25, 2005.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–NYSE–2004–031), as amended, be, and hereby is, approved, and that Amendment No. 2 thereto to the proposed rule change be,

[11] Amendment No. 2 also proposes a technical correction to the text of NYSE Rule 634, as follows. The proposed deletion appears in [brackets]:

The Director of Arbitration shall from time to time appoint two panels of arbitrators,[.] the first of such panels shall be composed of persons engaged in or retired from the securities business and the second of such panels shall be composed of persons not engaged in the securities business.

[12] *See* Exchange Act Release No. 48946 (Dec. 17, 2003), 68 FR 74678 (Dec. 24, 2003).

[13] *See* NYSE Constitution, Article IV, Section 12(a)(4) (the Regulatory Oversight Committee is responsible for, *inter alia,* ''personnel actions involving senior regulatory personnel'').

[14] *See supra* note 6.

[15] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

[17] *See, e.g.,* NYSE Constitution, Article IV, Section 14(a) (''Delegation Authority''); *id.,* Article VI, Section 4(a) (responsibilities of the Chief Regulatory Officer are ''[s]ubject to the authority of the Board and the Regulatory Oversight & Regulatory Budget Committee'').

[18] Increased scrutiny of applicants for the position of arbitrator, while a laudable goal, is beyond the scope of this particular proposed rule change.

[19] *See* Exchange Act Release No. 50939, *supra* note 4, 70 FR at 00421, citing NYSE Constitution, Article IV, Section 12(a)(4).

[20] 15 U.S.C. 78s(b)(2).

and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–900 Filed 3–3–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51245; File No. SR–PCX–2004–117]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. To Trade the streetTRACKS® Gold Shares Pursuant to Unlisted Trading Privileges

February 23, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 10, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The proposal would permit the Exchange to trade the streetTRACKS® Gold Shares (''GLD'' or ''Shares'') pursuant to unlisted trading privileges (''UTP''). The Shares represent units of fractional undivided beneficial interests in and ownership of the streetTRACKS® Gold Trust (''Trust''). The Commission previously has approved GLD for original listing and trading on the New York Stock Exchange (''NYSE'').[3]

On January 28, 2005, PCX filed Amendment No. 1 to the proposal.[4] The Commission is publishing this notice and order to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX, through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), proposes to amend its rules governing the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE, by adopting PCXE Rule 5.2(j)(5). The proposal would permit the Exchange to trade GLD on a UTP basis. The text of the proposed rule change is available on the Exchange's Web site (*http://www.pacificex.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to trade the streetTRACKS® Gold Shares (ticker symbol: GLD) pursuant to UTP. The value of each Share will correspond to a fixed amount of gold[5] and fluctuate with the spot price of gold. Purchasing Shares in the Trust provides investors a mechanism to participate in the gold market.

a. *Description of the Gold Market.* The global trade in gold consists of over-the-counter (''OTC'') transactions in spot, forwards, and options and other derivatives, together with exchange-traded futures and options. The global gold market consists of the following components, described briefly below.

(1) *The OTC Market.* The OTC market trades on a continuous basis 24 hours per day and accounts for most global gold trading. Liquidity in the OTC market can vary from time to time during the course of the 24-hour trading day. Fluctuations in liquidity are reflected in adjustments to dealing spreads—the differential between a dealer's ''buy'' and ''sell'' prices. According to the Trust's Registration Statement, the period of greatest liquidity in the gold market is typically when trading in the European time zones overlaps with trading in the United States, which is when OTC market trading in London, New York, and other centers coincides with futures and options trading on the Commodity Exchange Inc. (''COMEX''), a division of the New York Mercantile Exchange, Inc. (''NYMEX''). This period lasts for approximately four hours each New York business day morning.

The OTC market has no formal structure and no open-outcry meeting place. The main centers of the OTC market are London, New York, and Zurich. Bullion dealers have offices around the world, and most of the world's major bullion dealers are either members or associate members of the London Bullion Market Association (''LBMA''), a trade association of participants in the London Bullion market.

There are no authoritative published figures for overall worldwide volume in gold trading. There are certain published sources that do suggest the significant size of the overall market. The LBMA publishes statistics compiled from the five members offering clearing services.[6] The monthly average daily volume figures published by the LBMA for 2003 range from a high of 19 million to a low of 13.6 million troy ounces per day.[7] COMEX publishes price and volume statistics for transactions in contracts for the future delivery of gold. COMEX figures for 2003 indicate that the average daily volume for gold

[21] 17 CFR 200.20–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (''NYSE Approval Order'').

[4] In Amendment No. 1, PCX replaced the filing in its entirety to, among other things: (1) Amend the proposed rule text to reference PCXE Rule 8.201(g)–(i); (2) clarify that the Shares would trade until 4:15 p.m. New York time; (3) clarify that last sale prices for the Shares are disseminated on a real-time basis; (4) represent that it would provide a link on its Web site to the NYSE Web site and the Trust Web site; (5) state that it would cease trading of the Shares if they were delisted from NYSE and not relisted on another exchange; (6) clarify that PCXE Rule 8.201(b) would be applicable to the Shares; (7) state that the Shares would be subject to trade-through provisions; (8) represent that its surveillance procedures would be adequate to deter manipulation; and (9) state the restrictions of PCXE Rule 8.201(g)–(i) on ETP Holders acting as GLD market makers would apply.

[5] Initially, each Share will correspond to one-tenth of a troy ounce of gold. The amount of gold associated with each Share is expected to decrease over time as the Trust incurs and pays maintenance fees and other expenses.

[6] Information regarding clearing volume estimates by the LBMA can be found at *http://www.lbma.org.uk/clearing_table.htm.* The three measures published by LBMA are: volume, the amount of metal transferred on average each day measured in million of troy ounces; value, measured in U.S. dollars, using the monthly average London p.m. fixing price; and the number of transfers, which is the average number recorded each day. The statistics exclude allocated and unallocated balance transfers where the sole purpose is for overnight credit and physical movements arranged by clearing members in locations other than London.

[7] *See* NYSE Approval Order, 69 FR at 64614.

futures contracts was 4.9 million troy ounces per day.[8]

(2) *Futures Exchanges.* The most significant gold futures exchanges are COMEX and the Tokyo Commodity Exchange (''TOCOM'').[9] Trading on these exchanges is based on fixed delivery dates and transaction sizes for the futures and options contracts traded. Trading costs are negotiable. As a matter of practice, only a small percentage of the futures market turnover ever comes to physical delivery of the gold represented by the contracts traded. Both exchanges permit trading on margin. COMEX operates through a central clearance system. TOCOM has a similar clearance system. In each case, the exchange acts as a counterparty for each member for clearing purposes.

(3) *Gold Market Regulation.* There is no direct regulation of the global OTC market in gold. However, indirect regulation of some of the overseas participants does occur in some capacity. In the United Kingdom, responsibility for the regulation of the financial market participants, including the major participating members of the LBMA, falls under the authority of the Financial Services Authority (''FSA''), as provided by the Financial Services and Markets Act 2000 (''FSM Act''). Under the FSM Act, all U.K.-based banks, together with other investment firms, are subject to a range of requirements, including fitness and properness, capital adequacy, liquidity, and systems and controls. The FSA is responsible for regulating investment products, including derivatives, and those who deal in investment products. Regulation of spot, commercial forwards, and deposits of gold and silver not covered by the FSM Act is provided for by The London Code of Conduct for Non-Investment Products, which was established by market participants in conjunction with the Bank of England, and is a voluntary code of conduct among market participants.

Participants in the U.S. OTC market for gold are generally regulated by their institutional supervisors, which regulate their activities in other markets in which they operate. For example, participating banks are regulated by the banking authorities. In the United States, the Commodity Futures Trading Commission regulates futures market participants and has established rules designed to prevent market manipulation, abusive trade practices, and fraud.

TOCOM has authority to perform financial and operational surveillance on its members' trading activities, scrutinize positions held by members and large-scale customers, and monitor the price movements of futures markets by comparing them with cash and other derivative markets' prices.

b. *Trust Management and Structure.* The Exchange proposes to trade GLD on a UTP basis. The Shares represent units of fractional undivided beneficial interest in and ownership of the Trust. The purpose of the Trust is to hold gold bullion. The investment objective of the Trust is for the Shares to reflect the performance of the price of gold, less the Trust's expenses.

The Trust is an investment trust and is not managed like a corporation or an active investment vehicle. The Trust has no board of directors or officers or persons acting in a similar capacity. The Trust is not a registered investment company under the Investment Company Act of 1940 (''1940 Act'') and is not required to register under the 1940 Act.

World Gold Trust Services, LLC, a wholly owned limited liability company of the World Gold Council,[10] is the sponsor of the Trust (''Sponsor''). The Bank of New York is the trustee of the Trust (''Trustee''). HSBC Bank USA, an indirect wholly owned subsidiary of HSBC Holdings plc, is the custodian of the Trust (''Custodian''). State Street Global Markets LLC, a wholly owned subsidiary of State Street Corporation, is the Marketing Agent of the Trust (''Marketing Agent''). The Marketing Agent and Custodian are registered broker-dealers. The Custodian and Marketing Agent and their affiliates, and affiliates of the Trustee, may act as Authorized Participants or purchase or sell gold or the Shares for their own account as agent for their customer and for accounts over which they exercise investment discretion. To the extent deemed appropriate by these entities, information barriers will exist between the Custodian, Marketing Agent, Trustee, and their affiliates transacting in the gold cash market or the Shares; however, the Exchange will not require such information barriers. UBS Securities LLC was the initial purchaser of the Shares (''Initial Purchaser''), as described below. The Sponsor, Trustee, Custodian, and Initial Purchaser are not affiliated with one another or with the Exchange.

c. *Trust Expenses and Management Fees.* Generally, the assets of the Trust (*e.g.*, gold bullion) will be sold to pay Trust expenses and management fees. These expenses and fees will reduce the value of an investor's Share as gold bullion is sold to pay such costs. Ordinary operating expenses of the Trust include: (1) Fees paid to the Sponsor; (2) fees paid to the Trustee; (3) fees paid to the Custodian; (4) fees paid to the Marketing Agent; and (5) various Trust administration fees, including printing and mailing costs, legal and audit fees, registration fees, and NYSE listing fees. The Trust's estimated ordinary operating expenses are accrued daily and reflected in the net asset value (''NAV'') of the Trust.

d. *Description and Characteristics of the Shares.* (1) *Liquidity*

The Shares may trade at a discount or premium relative to the NAV per Share because of non-concurrent trading hours between the major gold markets and the Exchange. While the Shares will trade on the Exchange until 4:15 p.m. New York time, liquidity in the OTC market for gold will be reduced after the close of COMEX at 1:30 p.m. New York time. During this time, trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity in the OTC gold market.

Because of the potential for arbitrage inherent in the structure of the Trust, the Sponsor believes that the Shares will not trade at a material discount or premium to the underlying gold held by the Trust. The arbitrage process, which in general provides investors the opportunity to profit from differences in prices of assets, increases the efficiency of the markets, serves to prevent potentially manipulative efforts, and can be expected to operate efficiently in the case of the Shares and gold.

(2) *Creation and Redemption of Trust Shares.* The Trust will create Shares on a continuous basis only in aggregations of 100,000 Shares (such aggregation referred to as a ''Basket''). Authorized Participants are the only persons that may place orders to create and redeem Baskets. Authorized Participants purchasing Baskets will be able to separate a Basket into individual Shares for resale.

Authorized Participants purchasing a Basket must make an in-kind deposit of gold (''Gold Deposit''), together with, if applicable, a specified cash payment

[8] Information regarding average daily volume estimates by the COMEX can be found at *http://www.nymex.com/jsp/markets/md_annual_volume6.jsp#2.* The statistics are based on gold futures contracts, each of which relates to 100 troy ounces of gold.

[9] There are other gold exchange markets, such as the Istanbul Gold Exchange, the Shanghai Gold Exchange, and the Hong Kong Chinese Gold & Silver Exchange Society.

[10] The World Gold Council is a not-for-profit association registered under Swiss law.

(''Cash Deposit'' [11] and together with the Gold Deposit, the ''Creation Basket Deposit''). The Sponsor anticipates that in the ordinary course of the Trust's operations a cash deposit will not be required for the creation of Baskets. Similarly, the Trust will redeem Shares only in Baskets, principally in exchange for gold and, if applicable, a cash payment (''Cash Redemption Amount'' [12] and together with the gold, the ''Redemption Distribution'').

The Exchange expects that certain Authorized Participants will be able to participate directly in the gold bullion market and the gold futures market. The Sponsor believes that the size and operation of the gold bullion market make it unlikely that an Authorized Participant's direct activities in the gold or securities markets would impact the price of gold or the price of the Shares. Each Authorized Participant is: (1) Regulated as a broker-dealer regulated under the Act and registered with NASD; or (2) is exempt from being, or otherwise is not required to be, regulated as a broker-dealer under the Act or registered with NASD, and in either case is qualified to act as a broker or dealer in the states or other jurisdictions where the nature of its business so requires. Certain Authorized Participants will be regulated under Federal and State banking laws and regulations. Each Authorized Participant will have its own set of rules and procedures, internal controls, and information barriers as it determines is appropriate in light of its own regulatory regime. Authorized Participants may act for their own accounts or as agents for broker-dealers, custodians, and other securities market participants that wish to create or redeem Baskets. An order for one or more Baskets may be placed by an Authorized Participant on behalf of multiple clients.

The total amount of gold and any cash required for the creation or redemption of each Basket will be in the same proportion to the total assets of the Trust (net of accrued and unpaid fees, expenses, and other liabilities) on the date the Purchase Order is properly received as the number of Shares to be created in respect of the Creation Basket Deposit bears to the total number of Shares outstanding on the date the Purchase Order is received. Except when aggregated in Baskets, the Shares are not redeemable. The Trust will impose transaction fees in connection with creation and redemption transactions.

The Trustee will determine the NAV [13] and daily adjusted NAV (''ANAV'') of the Trust on each business day at the earlier of the London p.m. Fix for such day or 12 p.m. New York time.[14] In determining the Trust's NAV and ANAV, the Trustee will value the gold held by the Trust based on the London p.m. Fix price for a troy ounce of gold. Once the value of the gold has been determined, the Trustee will determine the ANAV of the Trust by subtracting all accrued fees (other than the fees to be computed by reference to the ANAV or custody fees based on the value of the gold held by the Trust), expenses, and other liabilities of the Trust from the total value of the gold and all other assets of the Trust (other than any amounts credited to the Trust's reserve account, if established). Then the ANAV of the Trust is used to compute the Trustee's, the Sponsor's, and Marketing Agent's fees.[15] To determine the Trust's NAV, the Trustee will subtract from the ANAV the amount of estimated accrued but unpaid fees that are based on the ANAV (*e.g.*, the Trustee's, the Sponsor's, and Marketing Agent's fees) and the amount of custody fees, which are based on the value of the gold held by the Trust. The Trustee will also determine the NAV per Share by dividing the NAV of the Trust by the number of the Shares outstanding as of the close of trading on NYSE.

The Exchange understands that, upon initiation of trading on NYSE, UBS Securities LLC, the Initial Purchaser, purchased 100,000 Shares, which comprised the seed Basket. The Initial Purchaser also purchased 900,000 Shares, which comprise the initial Baskets. The Trust received all proceeds from the offering of the seed Basket and the initial Baskets in gold bullion. In connection with the offering and sale of the initial Baskets, the Sponsor paid a fee to the Initial Purchaser at the time of its purchase of the initial Baskets. In addition, the Initial Purchaser received commissions/fees from investors who purchased Shares from the initial Baskets through their commission/fee-based brokerage accounts.

(3) *Information About Underlying Gold Holdings.* The last sale price for the Shares will be disseminated, on a real-time basis, over the Consolidated Tape by each market trading the Shares. There is a considerable amount of gold price and gold market information available on public Web sites and through professional and subscription services. In most instances, real-time information is available only for a fee, and information available free of charge is subject to delay (typically, 20 minutes).

Investors may obtain on a 24-hour basis gold pricing information based on the spot price for a troy ounce of gold from various financial information service providers, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. An organization named EBS provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot gold, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. Complete real-time data for gold futures and options prices traded on COMEX are available by subscription from Reuters and Bloomberg. NYMEX also

[11] The amount of any required Cash Deposit will be determined as follows: (1) The fees, expenses and liabilities of the Trust will be subtracted from any cash held or receivable by the Trust as of the date an Authorized Participant places an order to purchase one or more Baskets (''Purchase Order''); and (2) the remaining amount will be divided by the number of Baskets outstanding and then multiplied by the number of Baskets being created pursuant to the Purchase Order. If the resulting amount is positive, that amount will be the required Cash Deposit. If the resulting amount is negative, the amount of the required Gold Deposit will be reduced by a number of fine ounces of gold equal in value to that resulting amount, determined by reference to the price of gold used in calculating the NAV of the Trust on the Purchase Order date. Fractions of an ounce of gold of less than 0.001 of an ounce included in the Gold Deposit amount will be disregarded.

[12] The Cash Redemption Amount is equal to the excess (if any) of all assets of the Trust other than gold, less all estimated accrued but unpaid fees, expenses, and other liabilities, divided by the number of Baskets outstanding and multiplied by the number of Baskets included in the Authorized Participant's order to redeem one or more Baskets (''Redemption Order''). The Trustee will distribute any positive Cash Redemption Amount through the Depository Trust Company (''DTC'') to the account of the Authorized Participant at DTC. If the Cash Redemption Amount is negative, the credit to the Authorized Participant's unallocated account (''Authorized Participant Unallocated Account'') will be reduced by the number of fine ounces of gold equal in value to that resulting amount, determined by reference to the price of gold used in calculating the NAV of the Trust on the Redemption Order date. Fractions of a fine ounce of gold included in the Redemption Distribution of less than 0.001 of an ounce will be disregarded. Redemption Distributions will be subject to the deduction of any applicable tax or other governmental charges due.

[13] The NAV of the Trust is the aggregate value of the Trust's assets less its liabilities (which include accrued expenses).

[14] The London fix is the most widely used benchmark for daily gold prices and is quoted by various financial information sources.

[15] The Custodian's fee is not calculated based on ANAV, but rather the value of the gold held by the Trust.

provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. The Exchange notes that there are a variety of other public Web sites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers, such as *The Washington Post.* Many of these sites offer price quotations drawn from other published sources, and as the information is supplied free of charge, it generally is subject to time delays.[16] Current gold spot prices are also available with bid/ask spreads from gold bullion dealers.

In addition, the Exchange, via a link to the Trust's Web site (*http://www.streettracksgoldshares.com*), will provide at no charge continuously updated bids and offers indicative of the spot price of gold on its own public Web site: *http://www.pacificex.com,* and on ArcaEx's Web site at *http://www.archipelago.com.*[17] The Trust Web site provides a calculation of the estimated NAV (also known as the Intraday Indicative Value or ''IIV'') of a Share as calculated by multiplying the indicative spot price of gold by the quantity of gold backing each Share. Comparing the IIV with the last sale price of the Shares helps an investor to determine whether, and to what extent, Shares may be selling at a premium or a discount to the NAV. Although provided free of charge, the indicative spot price and IIV per Share will be provided on an essentially real-time basis.[18] The Trust Web site provides the NAV of the Trust as calculated each business day by the Sponsor. In addition, the Trust Web site contains the following information, on a per-Share basis, for the Trust: (a) The IIV as of the close of the prior business day and the midpoint of the bid/ask price[19] in relation to such IIV (''Bid/Ask Price''), and a calculation of the premium or discount of such price against such IIV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the IIV, within appropriate ranges, for each of the four previous calendar quarters. The Trust Web site also provides the Trust's prospectus, as well as the two most recent reports to stockholders. Finally, the Trust Web site provides the last sale price of the Shares as traded in the U.S. market, subject to a 20-minute delay.[20]

e. *Initial Share Issuance and Continued Trading.* The Exchange understands that a minimum of three Baskets were outstanding at the commencement of trading on NYSE. The number of Shares per Basket is 100,000.

The Exchange's applicable continued trading criteria require it to delist the Shares if any of the following occur: (1) The value of gold is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, the Trust, the Custodian, Marketing Agent, or the Exchange, or the Exchange stops providing the hyperlink on its Web site to any such unaffiliated gold value; (2) the IIV is no longer made available on at least a 15-second delayed basis; or (3) such other event shall occur or condition exist that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. In addition, the Exchange will remove the Shares from trading upon termination of the Trust or delisting from the NYSE without immediate re-listing on another exchange.

f. *Exchange Trading Rules and Policies.* The Shares would be subject to new PCXE Rule 5.2(j)(5) and existing PCXE Rule 8.201(g)–(i) regard the trading of the Shares. PCXE Rule 8.201(b), which refers to Commodity-Based Trust Shares, would be applicable to the Shares. Thus, the Shares would be subject to all applicable PCX trading rules.

With respect to trading halts, PCX may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on PCX in the Shares could be halted because of market conditions or for reasons that, in the view of PCX, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in gold; or (2) other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, PCXE Rule 7.12 sets forth the trading parameters, *i.e.*, ''circuit breakers'' applicable to the Shares in periods of extraordinary market volatility.

The Shares would trade on ArcaEx during NYSE trading hours until 4:15 p.m. New York time each business day, and would trade in a minimum price variation of $0.01 pursuant to PCXE Rule 7.6. Trading rules pertaining to odd-lot trading in PCX equities[21] also would apply. The Shares would be deemed ''Eligible Securities'' as defined in PCXE Rule 7.55(a)(3), for the purpose of the ITS Plan and therefore would be subject to the trade-through provisions in PCXE Rule 7.56, which requires that ETP Holders avoid initiating trade-throughs for ITS securities.

g. *Surveillance.* The Exchange represents that its surveillance procedures applicable to trading Shares on ArcaEx are adequate to deter manipulation and will be similar to those used for investment company units currently trading on PCX and will incorporate and rely upon existing PCX surveillance procedures governing equities. In addition, for intermarket surveillance purposes, the Exchange entered into a reciprocal Memorandum of Understanding (''MOU'') with NYMEX for the sharing of information related to any financial instrument based, in whole or in part, upon an interest in or performance of gold.

Further, PCXE Rule 8.201(g)–(i) sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. PCXE Rule 8.201(h) requires that the ETP Holder acting as a registered Market Maker in the Shares provide the Exchange with information relating to its trading in physical gold, gold futures contracts, options on gold futures, or any other gold derivatives. PCXE Rule 8.201(i) prohibits the ETP holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in physical gold, gold futures contracts, options on gold futures, or any other gold derivatives. In addition, PCXE Rule 8.201(g) prohibits the ETP Holder acting as a registered Market Maker in the Shares from being

[16] There may be incremental differences in the gold spot price among the various information service sources. While the Exchange believes the differences in the gold spot price may be relevant to those entities engaging in arbitrage or in the active daily trading of gold or gold-based products, the Exchange believes such differences are likely of less concern to individual investors intending to hold the Shares as part of a long-term investment strategy.

[17] The Trust Web site's gold spot price will be provided by The Bullion Desk (*http://www.thebulliondesk.com*). The Trust Web site will indicate that there are other sources for obtaining the gold spot price. In the event that the Trust Web site should cease to provide this indicative spot price from an unaffiliated source (and the intraday indicative value) of the Shares, the Exchange will cease to trade the Shares.

[18] The Trust's Web site, to which the Exchange's Web sites will link, will disseminate an indicative spot price of gold and the IIV and indicate that these values are subject to an average delay of 5 to 10 seconds.

[19] The bid/ask price is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day IIV.

[20] The last sale price of the Shares in the secondary market is available on a real-time basis for a fee from regular data vendors.

[21] PCXE Rule 7.38.

affiliated with a market maker in physical gold, gold futures, or options on gold futures unless adequate information barriers are in place, as provided for in PCXE Rule 7.26.

h. *Suitability.* Pursuant to PCXE Rule 9.2(a), each ETP Holder, through a general partner, a principal executive officer, or a designated authorized person, shall used due diligence to learn the essential facts relative to every customer, every order, every account accepted or carried by such ETP Holder and every person holding power of attorney over any account accepted or carried by such ETP Holder.

i. *Information Circular.* The Exchange will distribute an Information Circular to its ETP Holders in connection with the trading in the Shares. The Circular will discuss the special characteristics and risks of trading this type of security. Specifically, the Circular, among other things, will discuss what the Shares are, how a Basket is created and redeemed, the requirement that ETP Holders deliver a prospectus to investors purchasing the Share prior to or concurrently with the confirmation of a transaction, applicable Exchange rules, dissemination of information regarding the indicative price of gold and IIV, trading information, and the applicability of suitability rules. The Information Circular will also explain that the Trust is subject to various fees and expenses described in the Registration Statement, and that the number of ounces of gold required to create a Basket or to be delivered upon a redemption of a Basket will gradually decrease over time because the Shares comprising a Basket will represent a decreasing amount of gold due to the sale of the Trust's gold to pay the Trust's expenses. The Information Circular will also reference the fact that there is no regulated source of last sale information regarding physical gold, and that the Commission has no jurisdiction over the trading of gold as a physical commodity.

In the Information Circular, ETP Holders will be informed that procedures for purchases and redemptions of the Shares in Baskets and that the Shares are not individually redeemable but are redeemable only in Basket-size aggregations or multiples thereof. The Information Circular will also advise ETP Holders of their suitability obligations with respect to recommended transactions to customers in the Shares. The Circular will also discuss any relief if granted by the Commission or the staff from any rules under the Act.

The Information Circular will likewise disclose that the NAV for Trust Shares will be calculated as of the earlier of the London p.m. Fix for such day or 12 p.m. New York time each day that the NYSE is open for trading.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[22] in general, and furthers the objectives of Section 6(b)(5) of the Act,[23] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. 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–PCX–2004–117 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–PCX–2004–117. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2004–117 and should be submitted on or before March 25, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to national securities exchanges.[24] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[25] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposal will benefit investors by increasing competition among markets that trade GLD.

In addition, the Commission believes that the proposal is consistent with Section 12(f) of the Act,[26] which permits an exchange to trade, pursuant to UTP, a security that is listed and traded on another exchange.[27] The Commission

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78*l*(f).

[27] Section 12(a) of the Act, 15 U.S.C. 78*l*(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless

Continued

notes that it previously approved the listing and trading of the Shares on NYSE.[28] The Commission also believes that the proposal is consistent with Rule 12f–5 under the Act,[29] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the existing rules of the Exchange governing the trading of equity securities, including rules relating to trading hours, trading halts, odd lots, and the minimum trading increment.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[30] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding GLD are disseminated through the Consolidated Quotation System. Furthermore, as noted by the Exchange, various means exist for investors to obtain reliable gold price information exist and thereby monitor the underlying spot market in gold relative to the NAV of their Shares. Additionally, the Trust's Web site will also provide an updated IIV at least every 15 seconds. If the Trust ceases to maintain or to calculate the IIV or if the value of the index ceases to be widely available, the Exchange would cease trading GLD.

The Commission notes that, if GLD were to be delisted by NYSE, the Exchange would no longer have authority to trade GLD pursuant to this order.

In support of the proposal, the Exchange made the following representations:

1. The Exchange's surveillance procedures are adequate to deter manipulation and that its existing surveillance procedures for investment company units will be utilized for the Shares. Among other things, the Exchange entered into an MOU with NYMEX for the sharing of information related to any financial instrument based, in whole or in part, upon an interest in or performance of gold.

2. The Exchange will distribute an information circular to its ETP Holders prior to the commencement of trading of GLD on the Exchange that explains its terms, characteristics, and risks of trading.

3. The Exchange will require an ETP Holder with a customer that purchases the Shares on the Exchange to provide that customer with a product prospectus and will note this prospectus delivery requirement in the information circular. This approval order is conditioned on the Exchange's adherence to these representations.

Finally, the Commission believes that the Exchange's rules imposing trading restrictions and information barriers on ETP Holder acting as a registered Market Maker in the Shares in GLD are reasonable and consistent with the Act. These rules generally require an ETP Holder acting as a registered Market Maker in the Shares to provide to the Exchange with information relating to its trading in physical gold, gold futures contracts, options on gold futures, or any other gold derivatives. Further, an ETP Holder acting as a registered Market Maker in the Shares is prohibited from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in physical gold, gold futures contracts, options on gold futures, or any other gold derivatives.

The Commission finds good cause for approving the proposal, as amended, prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of GLD on NYSE is consistent with the Act.[31] The Commission presently is not aware of any regulatory issue that should cause the Commission to revisit that earlier finding or preclude the trading of GLD on the Exchange pursuant to UTP. Therefore, accelerating approval of the proposal should benefit investors by creating, without undue delay, additional competition in the market for GLD.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR–PCX–2004–117), is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–880 Filed 3–3–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51257; File No. SR–Phlx–2005–10]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto Relating to Fees Applicable to Linkage P and P/A Orders

February 25, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 28, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On February 16, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is granting accelerated approval of the proposed rule change, as amended, on a pilot basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of fees to: (1) Reduce from $.45 per contract to $.15 per contract the Exchange's equity option transaction charge[4] applicable to Principal Orders

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the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[28] *See* NYSE Approval Order, *supra* note 3.

[29] 17 CFR 240.12f–5.

[30] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[31] *See supra* note 3.

[32] 15 U.S.C. 78s(b)(2).

[33] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 dated February 16, 2005 (''Amendment No. 1''). Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] The equity option transaction charge would apply to equity options and to options overlying Exchange-Traded Fund Shares.

(''P Orders'') sent to the Exchange via the Intermarket Options Linkage (''Linkage'') pursuant to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Plan''); [5] and (2) adopt a $.15 per contract equity option transaction charge for Linkage Principal Acting as Agent Orders (''P/A Orders'').[6]

The Exchange would charge the clearing member firm of the sender of inbound Linkage P and P/A Orders. Consistent with current practice and with the Plan, the Exchange would not charge for the execution of Satisfaction Orders sent through Linkage.

The Exchange intends to incorporate this new fee structure as part of an existing pilot program, which is scheduled to expire July 31, 2005.[7]

The text of the proposed rule change is available on the Phlx's Web site (*http://www.phlx.com*), at the Phlx's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of reducing the charge for P Orders from $.45 to $.15 is to encourage additional order flow to the Exchange and remain competitive. The purpose of adopting a $.15 fee for P/A Orders is to raise revenue for the Exchange. The Exchange notes that other exchanges that are participants in the Plan (''Participants'') also charge fees for P and P/A Orders.[8]

The Exchange specifically requests that the Commission approve the proposal such that it would apply to transactions that settle on or after February 1, 2005.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(4) of the Act [10] in particular, in that it is an equitable allocation of reasonable fees among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

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–Phlx–2005–10 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–Phlx–2005–10. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2005–10 and should be submitted on or before March 25, 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 is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,[11] and, in particular, the requirements of Section 6(b) of the Act [12] and the rules

[5] *See* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000); (order approving the Plan); and 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (order approving Phlx as a participant in the Plan).

[6] Under Section 2(16) of the Plan and Exchange Rule 1083(k), a ''Linkage Order'' means an Immediate or Cancel order routed through the Linkage as permitted under the Plan. There are three types of Linkage Orders:

(i) ''Principal Acting as Agent Order,'' which is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent;

(ii) ''Principal Order,'' which is an order for the principal account of an Eligible Market Maker and is not a P/A Order; and

(iii) ''Satisfaction Order,'' which is an order sent through the Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through.

[7] *See* Securities Exchange Act Release No. 50125 (July 30, 2004), 69 FR 47479 (August 5, 2004) (SR–Phlx–2004–44). In that filing, the Exchange established, on a pilot basis, a fee of $.45 per contract for inbound P Orders. The instant proposed rule change would reduce the fee for inbound P Orders from $.45 per contract to $.15 per contract, and would establish, as part of the pilot, a fee of $.15 per contract for inbound P/A Orders.

[8] *See e.g.*, Securities Exchange Act Release Nos. 50124 (July 30, 2004), 69 FR 47963 (August 6, 2004) (SR–BSE–2004–32); 50010 (July 13, 2004), 69 FR 43649 (July 21, 2004) (SR–ISE–2004–25); 50048 (July 20, 2004), 69 FR 45102 (July 28, 2004) (SR–CBOE–2004–40); 50082 (July 26, 2004), 69 FR 45875 (July 30, 2004) (SR–PCX–2004–68); and 50116 (July 29, 2004), 69 FR 47473 (August 5, 2004) (SR–Amex–2004–54).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] In approving this proposal, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b).

and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[13] which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that lowering the fee for inbound P Orders retroactively to transactions that settled on or after February 1, 2005 should reduce a financial disincentive to send P Orders to the Phlx. The Commission also believes that implementing a fee for inbound P/A Orders is consistent with the practices of the other Participants. The Commission believes that approving the proposed rule change, as amended, on a pilot basis, until July 31, 2005, will give the Exchange and the Commission further opportunity to evaluate whether Linkage fee are appropriate.

The Commission believes that the proposed rule change, as amended, is generally consistent with the practices of other Participants and presents no new regulatory issues. Accordingly, the Commission finds good cause pursuant to Section 19(b)(2) of the Act,[14] for approving this proposed rule change, as amended, prior to the thirtieth day after publication of notice thereof in the **Federal Register**.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–Phlx–2005–10), as amended, is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–878 Filed 3–3–05; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(2).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51272; File No. SR–Phlx–2004–75]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Floor Official Conflicts of Interest

February 28, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 9, 2004, the Philadelphia Stock Exchange, Inc. (''Phlx'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 124, Disputes, and Option Floor Procedure Advices–27, Floor Official Rulings—Options (''OFPA F–27''), to authorize Exchange staff to determine that a Floor Official is ineligible to participate in a particular ruling where it appears that such Floor Official has a conflict of interest.

Below is the amended text of the proposed rule change. Proposed new language is in italics.

* * * * *

Disputes

Rule 124. (a)–(d) * * * No change.

Commentary:

.01. Exchange staff may determine that a Floor Official is ineligible to participate in a particular ruling where it appears that such Floor Official has a conflict of interest. For purposes of this Rule, and without limitation, a conflict of interest exists where a Floor Official: (a) is directly or indirectly affiliated with a party seeking a Floor Official ruling; (b) is a participant or is directly or indirectly affiliated with a participant in a transaction that is the subject of a Floor Official ruling; (c) is a debtor or creditor of a party seeking a Floor Official ruling; or (d) is an immediate family member of a party seeking a Floor Official ruling. Exchange staff may consider other circumstances, on a case-by-case basis, in determining the eligibility or ineligibility of a particular Floor Official to participate in a particular ruling due to a conflict of interest.

* * * * *

F–27 Floor Official Rulings—Options

Floor Officials are empowered to render rulings on the trading floor to resolve trading disputes occurring on and respecting activities on the trading floor. All rulings rendered by Floor Officials are effective immediately and must be complied with promptly. Failure to promptly comply with a ruling concerning a trading dispute may result in referral to the Business Conduct Committee. Failure to promptly comply with other rulings issued pursuant to Order and Decorum Regulations or Floor Procedure Advices and not concerning a trading dispute may result in an additional violation. Floor Officials need not render decisions in any instance where the request for a ruling was not made within a reasonable period of time. A Floor Official should not render a decision or authorize a citation where such Floor Official was involved in or affected by the dispute, as well as in any situation where the Floor Official is not able to objectively and fairly render a decision.

Floor Officials shall endeavor to be prompt in rendering decisions. However, in any instance where a Floor Official has determined that the benefits of further discovery as to the facts and circumstances of any matter under review outweigh the monetary risks of a delayed rulings, the Floor Official may determine to delay rendering the ruling until such time as that further discovery is completed. In issuing decisions for the resolution of trading disputes, Floor Officials shall institute the course of action deemed by the ruling Floor Official to be more fair to all parties under the circumstances at the time. A Floor Official may direct the execution of an order on the floor, to adjust the transaction terms or participants to an executed order on the floor. However, two Floor Officials may nullify a transaction if they determine the transaction to have been in violation of Rules 1014 (Obligations and Restrictions Applicable to specialist and ROTs), 1015 (Quotation Guarantees), 1017 (Priority and Parity at Openings in Options), 1033 (Bids and Offers) or 1080 (AUTOM).

A minimum of three members of the Sub-Committee on Rules and Rulings, a sub-committee of the standing committee, or the Chairperson of the standing committee (or his designee) if three Sub-Committee members cannot

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

be promptly convened, shall be empowered by the standing committee to review Floor Official rulings (''Review Panel''). Requests for a review must be submitted to the Director of the Market Surveillance Department of the Exchange (or his designee) within 15 minutes from the time the contested ruling was rendered. Any person who appeals a Floor Official ruling concerning a trading dispute and loses will be subject to a $250.00 fee upon a finding by the Review Panel that such appeal is frivolous. The Review Panel shall endeavor to meet on the matter as soon as practicable after notice of a request for a review of a Floor Official ruling. Floor Official rulings may be sustained, overturned or modified by a majority vote of the Review Panel members present. In making a determination, the Review Panel may consider facts and circumstances not available to the ruling Floor Official as well as action taken by the parties in reliance on the Floor Official's ruling (*e.g.*, cover, hedge, and related trading activity). Decisions of the Review Panel will be considered final decisions of the standing committee and may be appealed to the Exchange's Board of Governors pursuant to Exchange By-Law Article XI. Neither Floor Official rulings nor Review Panel decisions reviewing Floor Official rulings preclude a person from also availing upon the Exchange's Arbitration facilities.

Exchange staff may determine that a Floor Official is ineligible to participate in a particular ruling where it appears that such Floor Official has a conflict of interest. For purposes of this Rule, and without limitation, a conflict of interest exists where a Floor Official: (a) Is directly or indirectly affiliated with a party seeking a Floor Official ruling; (b) is a participant or is directly or indirectly affiliated with a participant in a transaction that is the subject of a Floor Official ruling; (c) is a debtor or creditor of a party seeking a Floor Official ruling; or (d) is an immediate family member of a party seeking a Floor Official ruling. Exchange staff may consider other circumstances, on a case-by-case basis, in determining the eligibility or ineligibility of a particular Floor Official to participate in a particular ruling due to a conflict of interest.

FINE SCHEDULE * * * No change.

* * * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to preclude Floor Officials from participating in rulings where they have conflicts of interest that may interfere with their ability to make fair and objective decisions. Accordingly, the proposed rule change would provide expressly that Exchange staff would be authorized to disqualify a Floor Official from participation in a particular ruling where it appears that such Floor Official has a conflict of interest.

Currently, Exchange Rule 124 and OFPA F–27 authorize Phlx Floor Officials to render rulings on the trading floor to resolve trading disputes occurring on and respecting activities on the trading floor. Floor Officials are also authorized to rule on Phlx member requests for relief from the requirements of certain rules in certain circumstances. The Exchange believes that a Floor Official should not, however, render a decision or authorize a citation where such Floor Official is involved in or affected by the dispute, as well as in any situation where the Floor Official is not able to objectively and fairly render a decision.

The proposed rule change would authorize Exchange staff[3] to disqualify a Floor Official from participation in a particular ruling where it appears that such Floor Official has a conflict of interest. Generally, Exchange staff would assign a Floor Official to hear and rule on a trading dispute or member request for relief from the requirements of an Exchange rule. The proposed rule change would require Exchange staff, prior to making any such assignment, to determine whether the Floor Official has a conflict of interest with respect to that particular dispute or request. If a conflict exists, then such Floor Official would be ineligible to participate in that ruling.[4] The proposed rule would define a ''conflict of interest'' to exist where a Floor Official is directly or indirectly affiliated with a party seeking a Floor Official ruling; is a participant or is directly or indirectly affiliated with a participant in a transaction that is the subject of a Floor Official ruling; is a debtor or creditor of a party seeking a Floor Official ruling; or is an immediate family member of a party seeking a Floor Official ruling. The proposed rule would not limit the term ''conflict of interest'' to these four circumstances and Exchange staff would be authorized to consider other circumstances, on a case-by-case basis, in determining the eligibility of a particular Floor Official to participate in a particular ruling.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, by providing expressly in the Exchange's rules that Exchange staff would be authorized to disqualify a Floor Official from participation in a particular ruling where it appears that such Floor Official has a conflict of interest, thus ensuring that the Exchange is able to take all necessary steps to prevent Floor Officials from making rulings where they have conflicts of interest that may interfere with their ability to make fair and objective decisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

[3] ''Exchange staff'' generally refers to staff of the Exchange's Office of Market Surveillance present on the trading floor. Telephone conversation among Richard Rudolph, Director and Counsel, Phlx, Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission and Geraldine Idrizi, Attorney, Division, Commission on December 15, 2004.

[4] Telephone conversation among Richard Rudolph, Director and Counsel, Phlx, Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission and Geraldine Idrizi, Attorney, Division, Commission on December 15, 2004.

[5] 15 U.S.C. 78s(b).

[6] 15 U.S.C. 78s(b)(5).

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall:

(a) By order approve such proposed rule change; or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2004–75 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–Phlx–2004–75. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2004–75 and should be submitted on or before March 25, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–899 Filed 3–3–05; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10043 and # 10044]

Illinois Disaster # IL–00001

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Illinois, dated 02/23/2005.

Incident: Flooding.

Incident Period: 01/01/2005 through 02/12/2005.

Effective Date: 02/23/2005.

Physical Loan Application Deadline Date: 04/25/2005.

EIDL Loan Application Deadline Date: 11/23/2005.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 1, 360 Rainbow Blvd. South 3rd Floor, Niagara Falls, NY 14303.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration on 02/23/2005, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Iroquois.

Contiguous Counties: Illinois, Ford, Kankakee, Vermilion, Indiana, Benton, and Newton.

The Interest Rates are:

Homeowners With Credit Available Elsewhere—5.875

Homeowners Without Credit Available Elsewhere—2.937

Businesses With Credit Available Elsewhere—5.800

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere—4.000

Other (Including Non-Profit Organizations) With Credit Available Elsewhere—4.750

Businesses And Non-Profit Organizations Without Credit Available Elsewhere—4.000

The number(s) assigned to this disaster for physical damage is 10043 6 and for economic injury is 10044 0.

The States which received EIDL Decl # are: Illinois and Indiana.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: February 23, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. 05–4237 Filed 3–3–05; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Proposed Collection, Comment Request.

AGENCY: Tennessee Valley Authority.

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR Section 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Alice D. Witt, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–6832. (SC: 001DCCB)

Comments should be sent to the Agency Clearance Officer no later than May 3, 2005.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission.

Title of Information Collection: River Operations Study (ROS)—Recreation User Data.

Frequency of Use: Annually for a period of five years.

Type of Affected Public: Individual recreation users at public and commercial recreation areas and recreation users from private water front homes.

Small Businesses or Organizations Affected: Yes.

Estimated Number of Annual Responses: 2,500–3,000.

Estimated Total Annual Burden Hours: 1,250–1,500.

Estimated Average Burden Hours Per Response: 0.5 hours.

Need For and Use of Information: As part of system wide re-evaluation of TVA reservoirs and tailwaters TVA conducted a survey of recreation use on 13 representative reservoirs and 6 representative tailwaters during calendar year 2002. Recreation use estimates were made for public use areas, commercial marinas, river outfitters, and private home owners.. In each case, information was collected on the amount of recreation use, length of stay, facility preference, trip origin, expenditures and economic impact.

These data now form the foundation for a TVA reservoir and tailwater recreation database—the first system-wide estimates on recreation use in the Valley collected since 1978. TVA recognizes the value of this database and proposes to keep it up-to-date and, improving its utility by refining the survey design and conducting additional surveys of recreational use on representative reservoirs and tailwaters.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations, Information Services.

[FR Doc. 05–4245 Filed 3–3–05; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–541 (Sub-No. 1X)]

Portland & Western Railroad, Inc.—Abandonment Exemption—in Washington County, OR

Portland & Western Railroad, Inc. (P&W), has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a portion of its line of railroad that extends from milepost 17.10 to milepost 20.05, near the City of Hillsboro, in Washington County, OR. The line traverses United States Postal Service Zip Code 97124.

P&W has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic, if any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 5, 2005, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 14, 2005. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 24, 2005, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to P&W's representative: Eric M. Hocky, Esq., Gollatz, Griffin & Ewing, P.C., Four Penn Center, Suite 200, 1600 JFK Blvd., Philadelphia, PA 19103.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

P&W has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by March 11, 2005. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), P&W shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by P&W's filing of a notice of consummation by March 4, 2006, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 25, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–4107 Filed 3–3–05; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Effective October 31, 2004, the filing fee for an OFA increased to $1,200. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2004 Update,* STB Ex Parte No. 542 (Sub-No. 11) (STB served Oct. 1, 2004).

DEPARTMENT OF THE TREASURY

Public Meeting of the President's Advisory Panel on Federal Tax Reform

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice advises all interested persons of the location of the March 8, 2005, public meeting of the President's Advisory Panel on Federal Tax Reform. This meeting was previously announced in 70 FR 8875 (February 23, 2005).

DATES: The meeting will be held on Tuesday, March 8, 2005, in Tampa, Florida, and will begin at 9:30 a.m.

ADDRESSES: The meeting will be held at SAGO Networks, 4465 W. Gandy Blvd.,

Suite 800, Tampa, Florida. Seating will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: The Panel staff at (202) 927–2TAX (927–2829) (not a toll-free call) or email *info@taxreformpanel.gov* (please do not send comments to this box). Additional information is available at *http://www.taxreformpanel.gov.*

Dated: March 2, 2005.

Mark S. Kaizen,

Designated Federal Officer.

[FR Doc. 05–4364 Filed 3–3–05; 8:45 am]

BILLING CODE 4810–25–P

Corrections

Federal Register

Vol. 70, No. 42

Friday, March 4, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–828]

Stainless Steel Wire Rod From Taiwan: Notice of Rescission of Antidumping Duty Administrative Review

Correction

In notice document 05–3835 appearing on page 9616 in the issue of Monday, February 28, 2005, make the following corrections:

1. In the first column, under the **DATES** heading, ''February 23, 2005'' should read ''February 28, 2005.''

2. In the second column, in the seventh line from the top, ''a notice'' should read ''a notice of initiation.''

3. In the 13th line from the top, ''in that'' should read ''it had.''

4. On the same page, in the same column, in the 14th line, after ''Outokumpu'' insert the following: ''as an affiliate of Walsin, and withdrew its request for an administrative review of Outokumpu.''

[FR Doc. C5–3835 Filed 3–3–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
March 4, 2005

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 414

Medicare Program; Competitive Acquisition of Outpatient Drugs and Biologicals Under Part B; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 414

[CMS–1325–P]

RIN 0938–AN58

Medicare Program; Competitive Acquisition of Outpatient Drugs and Biologicals Under Part B

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement provisions of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 that require the implementation of a competitive acquisition program for certain Medicare Part B drugs not paid on a cost or prospective payment system basis. Beginning January 1, 2006, physicians will generally be given a choice between obtaining these drugs from vendors selected through a competitive bidding process or directly purchasing these drugs and being paid under the average sales price system. We are seeking comments on which of the proposed approaches we should use to implement the competitive acquisition program as well as the criteria and standards that should be applied in the selection and enrollment of vendors.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on April 26, 2005.

ADDRESSES: In commenting, please refer to file code CMS–1325–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/regulations/ecomments*. (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1325–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by mailing your comments to the addresses provided at the end of the ''Collection of Information Requirements'' section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Lia Prela, (410) 786–6508.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–1325–P and the specific ''issue identifier'' that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. CMS posts all electronic comments received before the close of the comment period on its public website as soon as possible after they have been received. Hard copy comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

Information on the competitive acquisition program can be found on the CMS homepage. You can access this data by going to the following Web site: *http://www.cms.hhs.gov/providers/drugs/compbid*.

To assist readers in referencing sections contained in this preamble, we are providing the following table of contents.

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In addition, because of the many organizations and terms to which we refer by acronym in this proposed rule, we are listing these acronyms and their corresponding terms in alphabetical order below.

Alphabetical List of Acronyms Appearing in the Proposed Rule

ASP—Average sales price.

AWP—Average wholesale price.
BBA—Balanced Budget Act of 1997, Public Law 105–33.
CAP—Competitive Acquisition Program.
CFR—Code of Federal Regulations.
CMS—Centers for Medicare & Medicaid Services (formerly Health Care Financing Administration).
DAW—Dispense as written.
DME—Durable medical equipment.
DMERC—Durable medical equipment regional carrier.
DOJ—Department of Justice.
EAC—Estimated acquisition cost.
ESRD—End-stage renal disease.
FAR—Federal Acquisition Regulation.
FDA—Food and Drug Administration.
GAO—Government Accountability Office.
GPOs—Group Purchasing Organizations.
GPO Access—Government Printing Office Access.
HCPCS—Healthcare Common Procedure Coding System.
HHS—Health and Human Services.
HIC—Health Insurance Number.
HIPAA—Health Insurance Portability and Accountability Act of 1996, Public Law 104–191.
ICD–9—International Classification of Diseases—Ninth Edition.
IVIG—Intravenous immune globulin.
LCDs—Local coverage determinations.
MMA—Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173.
MSN—Medical summary notice.
NDC—National Drug Code.
OIG—Office of Inspector General.
OPPS—Outpatient prospective payment system.
PIN—Provider identification number.
PSCs—Program Safeguard Contractors.
RFA—Regulatory Flexibility Act (September 19, 1980, Public Law 96–354).
RFI—Request for information.
RTI—Research Triangle Institute.
UPIN—Unique provider identification number.
WAC—Wholesale acquisition cost.

I. Background

A. Covered Drugs and Biologicals

Medicare Part B currently covers a limited number of prescription drugs. For the purposes of this proposed rule, the term ''drugs'' will hereafter refer to both drugs and biologicals. Currently covered Medicare Part B drugs generally fall into three categories: drugs furnished incident to a physician's service, drugs administered via a covered item of durable medical equipment (DME), and drugs covered by statute.

1. Drugs Furnished Incident to a Physician's Service

These are injectable or intravenous drugs that are administered incident to a physician's service (section 1861(s)(2)(A) of the Social Security Act (the Act)). Under the ''incident-to'' provision, the physician must incur a cost for the drug, and must bill for it. The Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 revised the ''incident-to'' provision, permitting payment of ''incident-to'' drugs under the CAP even though the physician participating in the CAP would not, in fact, incur a cost for the drug or actually bill for the drug. The Act limits coverage to drugs that are not usually self-administered. Examples include injectable prostate cancer drugs (such as lupron acetate for depot suspension, goserelin acetate implant), injectable drugs used in connection with the treatment of cancer (such as epoetin alpha), intravenous drugs used to treat cancer (such as paclitaxel and docetaxel used to treat breast cancer), injectable anti-emetic drugs used to treat the nausea resulting from chemotherapy, infliximab used to treat rheumatoid arthritis, and rituximab used to treat non-Hodgkin's lymphoma.

2. Durable Medical Equipment (DME) Drugs

These are drugs that are administered through a covered item of DME, such as a nebulizer or pump. Two of the most common drugs in this category are the inhalation drugs albuterol sulfate and ipratropium bromide.

3. Statutorily Covered Drugs and Other Drugs

Drugs specifically covered by statute include— immunosuppressive drugs; hemophilia blood clotting factor; certain oral anti-cancer drugs; oral anti-emetic drugs; pneumococcal, influenza and hepatitis B vaccines; antigens; erythropoietin for trained home dialysis patients; certain other drugs separately billed by end stage renal disease (ESRD) facilities (for example, iron dextran, vitamin D injections); and osteoporosis drugs.

4. Types of Providers

Types of providers and suppliers that are paid based on the current drug payment methodology for all or some of the Medicare covered drugs they furnish include: physicians, pharmacies, DME suppliers, hospital outpatient departments, and ESRD facilities.

5. Drugs Paid on a Cost or Prospective Payment Basis

Drugs paid on a cost or prospective payment basis that are outside of the scope of this proposed rule include— drugs furnished during an inpatient hospital stay (except clotting factor); drugs paid under the outpatient prospective payment system (OPPS); drugs furnished by ESRD facilities whose payments are included in Medicare's composite rate; and drugs furnished by critical access hospitals, skilled nursing facilities (unless outside of a covered stay), comprehensive outpatient rehabilitation facilities, rural health facilities, and federally qualified health centers.

B. History of the Current Payment System

In the June 5, 1991 physician fee schedule proposed rule (56 FR 25792), we proposed that the drug payment limit be based on 85 percent of the national average wholesale price (AWP) of the drug. For very high volume drugs, we proposed that the drug payment limits be based on the lesser of the 85 percent of the AWP or the estimated acquisition cost (EAC) of the drugs. Based on comments received, the 1992 physician fee schedule final rule established a payment limit based on the lower of 100 percent of AWP or the EAC. However, the EAC proved to be unworkable and was never implemented. Various legislative proposals were submitted to move away from payment based on 100 percent of AWP, including changing the percentage of AWP to a lower amount. In 1997, the Congress amended the Act to limit payment for drugs not paid on a cost or prospective payment basis to the lower of the actual charge or 95 percent of AWP (section 1842(o)(1) of the Act as added by section 4556 of the Balanced Budget Act of 1997 (BBA 1997) (Pub. L. 105–33)).

Numerous reports by the General Accounting Office (GAO), and the Office of Inspector General (OIG), as well as data collected by the Department of Justice (DOJ), indicated that 95 percent of list AWP reflected in published compendia is significantly higher than the prices that drug manufacturers, wholesalers, physician supply houses, specialty pharmacies, and similar entities actually charge to physicians and other suppliers purchasing these drugs.

C. Revised Drug Payment Methodology

Based on these numerous reports conducted by the OIG and the GAO as well as the data collected by the DOJ

that identified the well-documented flaws in the AWP drug payment system, significant changes were made to the manner in which Medicare Part B pays for covered drugs.

The MMA revised the drug payment methodology creating a new pricing system based on a drug's Average Sales Price (ASP). The MMA also provides for a program beginning in 2006 to give physicians a choice between—(1) obtaining these drugs from vendors selected through a competitive bidding process; or (2) directly purchasing these drugs and being paid under the ASP.

Effective January 2005, Medicare pays for the majority of Part B covered drugs using a drug payment methodology based on the ASP. In accordance with section 1847A of the Act, manufacturers submit to us the ASP data for their products. These data include all the manufacturer's sales of a drug to all purchasers in the United States in a calendar quarter (excluding certain sales exempted by statute) and the total number of units of the drug sold by the manufacturer in that same quarter, with limited exceptions. The sales price is net of discounts such as volume discounts, prompt pay discounts, cash discounts, free goods that are contingent on any purchase requirement, chargebacks, and rebates (other than rebates under section 1927 of the Act). The Medicare payment rate is based on 106 percent of the ASP (or for single source drugs, 106 percent of wholesale acquisition cost (WAC), if lower), less applicable deductible and coinsurance.

D. Competitive Acquisition Program (CAP)

Section 303(d) of the MMA provides for an alternative payment methodology for most Part B covered drugs that are not paid on a cost or prospective payment basis. In particular, section 303(d) of the MMA amends Title XVIII of the Act by adding a new section 1847B, which establishes a competitive acquisition program for the acquisition of and payment for competitively biddable Part B covered drugs and biologicals furnished on or after January 1, 2006.

Beginning January 1, 2006, physicians will have a choice between—(1) obtaining these drugs from entities selected to participate in the CAP in a competitive bidding process ; or (2) acquiring and billing for competitively biddable Part B covered drugs under the ASP drug payment methodology. The provisions for acquiring and billing for drugs through this new system, as well as additional information about this new drug payment system, are described in this proposed rule.

The competitive acquisition program may provide opportunities for Federal savings to the extent that aggregate bid prices are less than 106 percent of ASP. However, the CAP has other purposes than the potential to achieve savings. The competitive acquisition program provides opportunities for physicians who do not wish to be in the business of drug acquisition. Engaging in drug acquisition may require physicians to bear financial burdens such as employing working capital and bearing financial risk in the event of non-payment for drugs. The CAP is designated to reduce this financial burden for physicians. In addition, physicians who furnish drugs often cite the burden of collecting coinsurance on drugs and that drug coinsurance can represent large amounts for a beneficiary and physician. The competitive acquisition program eliminates the need for physicians to collect coinsurance on CAP drugs from Medicare beneficiaries.

II. Provisions of the Proposed Rule

A. Policy for the CAP

1. General Overview of the CAP

[If you choose to comment on issues in this section, please include the caption ''Overview of the CAP'' at the beginning of your comments.]

Implementation

To implement the CAP, we need to complete a number of activities prior to January 1, 2006, including—

designating or developing quality, service, and financial performance standards for vendors, creating a pricing methodology, designing and running a bidding process from solicitation through contract award, providing physicians with an opportunity to elect to participate and select a vendor; educating beneficiaries about the program; and other activities specified in section 1847B of the Act and described elsewhere in this proposed rule.

The statute provides some flexibility in the development of the CAP by requiring an appropriate ''phase-in'' of the program and providing the Secretary with the discretion to select appropriate categories of drugs and appropriate geographic areas for the program. Section 1847B(a)(1)(B) of the Act states that for purposes of implementing the CAP, ''the Secretary shall establish categories of competitively biddable drugs and biologicals. The Secretary shall phase in the program with respect to those categories beginning in 2006 in such manner as the Secretary determines to be appropriate.'' Additionally, the statute states that the competitive acquisition areas for the CAP on which contracts are to be awarded (and vendors chosen) are ''appropriate geographic regions established by the Secretary'.

Activities Prior to the Issuance of This Proposed Rule

Subsequent to the enactment of the MMA, we initiated the following activities to enable us to implement the statutory provisions of section 1847B of the Act:

—We awarded a contract to Research Triangle Institute (RTI) to obtain information and develop alternatives regarding the implementation of a drug and biological competitive bidding program. As part of this contract, RTI consulted with groups representing beneficiaries, physicians and suppliers, drug suppliers, and drug manufacturers to obtain input on the implementation of this MMA provision.

—We conducted a Special Open Door Listening Session on April 1, 2004, to gather additional input, and to allow interested parties to hear and be heard by other members of the healthcare industry.

—We established an electronic mailbox, *MMA303DDrugBid@cms.hhs.gov,* for interested parties to submit comments on the CAP program prior to the issuance of this proposed rule.

—We issued a Request for Information (RFI) on December 13, 2004. The purpose of this RFI was to assess the public's interest in bidding on contracts to supply drugs and biologicals for the CAP. In reply to the RFI, we received 15 responses expressing an interest to participate in the CAP. Most responders indicated a willingness to provide selected Part B drugs on a national basis. Responders also provided information regarding the types of drugs they would be most interested in providing within the selected jurisdictions. Four responders indicated a willingness to provide nearly all the drugs listed on the RFI.

In the specialty areas of oncology, hematology, internal medicine, infectious disease, urology, rheumatology, and obstetrics/gynecology, several responders indicated a willingness to provide the most costly and the most frequently used drugs in these areas. In addition, some responders indicated an interest in providing drugs or biologicals in the areas of oncology, hematology, pulmonary, and neurology.

Regulations

We propose to codify the requirements and provisions for the CAP in regulations at 42 CFR Part 414, Subpart K. We propose to revise the heading for subpart K to read ''Payment for Drugs and Biologicals under Part B''. We also propose to amend existing sections and section headings, and add new definitions and sections to set forth the proposed requirements with respect to the CAP. Specifically, we are proposing to revise existing § 414.900, which sets forth the basis and scope for subpart K, to provide that the regulations in this subpart implement sections 1847A and 1847B of the Act. In the examples of drugs at § 414.900, we propose to revise paragraph (b)(ii) to clarify that the hepatitis vaccine referred to in this paragraph is the hepatitis ''B'' vaccine. Under this subpart, we propose to add new § 414.906 through § 414.920 to address requirements with respect to payment under the CAP. We also are revising § 414.902 to add definitions pertaining to the new CAP addressed in new § 414.906 through § 414.920.

2. Categories of Drugs To Be Included Under the CAP

[If you choose to comment on issues in this section, please include the caption ''Categories of Drugs to be Included under the CAP'' at the beginning of your comments.]

Section 1847B of the Act describes a program that will permit physicians to elect to obtain drugs from contractors rather than purchasing and billing for those drugs themselves. The statute, therefore, most closely describes a system for the provision of and the payment for drugs provided incident to a physician's service. For example, the mechanisms described in the statute include the following:

- Only physicians are expressly given an opportunity to elect to participate in the CAP.
- The second sentence of section 1847B(a)(1)(A) of the Act explicitly indicates that section 1874B shall not apply in the case of a physician who elects section 1847A of the Act to apply.
- Physicians who elect to obtain drugs under the CAP make an annual selection of the vendor through which drugs will be acquired and delivered to the physician under Part B.
- Section 1847B(a)(3)(A) of the Act specifically applies the CAP to drugs and biologicals that are prescribed by a physician who has elected the CAP to apply.
- Payment for drugs furnished under the CAP is conditioned upon drug administration.
- The submission of information that will be used by the vendor for collection of cost sharing applies to physicians.
- The primary site for delivery of drugs furnished under the CAP is the physician's office.
- The statute requires the Secretary to make available to physicians on an ongoing basis a list of CAP vendors.
- The statute explicitly defines a ''selecting physician'' to be one who has elected the CAP program to apply.

Section 1847B(a)(1)(B) of the Act specifically requires the Secretary to establish categories of drugs that will be included in the CAP, and requires the Secretary to phase in the program with respect to these categories, as the Secretary determines to be appropriate. Section 1847B(a)(1)(D) of the Act further authorizes the Secretary to exclude competitively biddable drugs and biologicals from the competitive bidding system if the application of competitive bidding to such drugs and biologicals—

(1) Is not likely to result in significant savings; or

(2) Is likely to have an adverse impact on access to such drugs and biologicals.

Finally, the statute defines the term ''competitively biddable drugs and biologicals'' for purposes of the CAP as ''a drug or biological described in section 1842(o)(1)(C) of the Act and furnished on or after January 1, 2006.'' The drugs described in section 1842(o)(1)(C) of the Act include most drugs paid under Medicare Part B and not otherwise paid under cost-based or prospective payment basis. Medicare Part B covered vaccines, drugs infused through a covered item of DME, and blood and blood products (not including clotting factor and intravenous immune globulin (IVIG)) are not included in the CAP because they are expressly excluded from section 1842(o)(1)(C) of the Act.

The statutory definition of ''competitively biddable drugs'' therefore includes drugs administered incident to a physician's service (for example, drugs commonly furnished by oncologists), drugs administered through DME (for example, inhalation drugs) with the exception of DME infusion drugs, and some drugs usually dispensed by pharmacies (for example, oral immunosuppressive drugs). Although the statutory definition includes all these categories of drugs, as noted above, the specific mechanisms described under section 1847B of the Act relate to the provision of and the payment for drugs provided incident to a physician's service. There may be an alternative reading of the statute, under which the CAP is properly restricted to drugs administered incident to a physician's service. We welcome comments on this issue.

Using our authority to establish drug categories and to phase in the CAP as appropriate, we could include in the CAP all drugs administered by physicians, or, for an initial period, only drugs that are usually administered by one or more physician specialties (for example, oncology or rheumatology). The CAP could be phased in with respect to categories of drugs in any number of ways. A phase-in could, for example, begin with drugs that are usually administered by oncologists, and later be extended to include all drugs administered by physicians. Given our concerns about the clear direction of the statute that the election to participate in this program rests with physicians, we do not believe it is possible to include drugs other than those administered as incident to a physician's service as part of this program. However, we also recognize that the statute provides a potentially broader definition of ''competitively biddable drugs and biologicals'' in section 1847B(a)(2)(A) of the Act. Therefore, we are soliciting comments on how an expansion of the drugs covered under this program might work, given that the option to participate clearly rests with the physician.

We propose to set forth the definition for ''competitively biddable drugs'' and other terms relevant to the CAP in regulations under revised § 414.902.

Below we discuss the merits of these options for the drug categories to be included within the CAP. We also discuss our proposed approach to phasing in the program with respect to drug categories. We invite comments on all these options and on all aspects of our proposal. We welcome alternative suggestions for our consideration for the final rule.

Drugs Furnished Incident to a Physician's Service

Under this option, all drugs furnished incident to a physician's service would be included in the CAP. The majority (more than 80 percent) of Medicare Part B drug expenditures are for drugs furnished incident to a physician's service, such as chemotherapy drugs. Therefore, inclusion of all drugs furnished incident to a physician's service would be important to provide an alternative to physicians who did not want to be in the drug purchasing business and did not want to have to collect coinsurance on drugs. It may also provide more opportunity for realizing savings to the program than some other options.

Phasing in CAP Drugs by Physician Specialty

As we have discussed above, it may be advisable to phase in the program by implementing the CAP initially for a limited set of drugs that are typically administered by a single physician specialty, such as a set of drugs commonly furnished by oncologists. Drugs commonly furnished by additional specialties could be included over the next few years of the program. Drugs typically furnished by oncologists constitute a large portion of the Part B drug market. In fact, drugs that are typically furnished incident to an oncologist's service represent the largest portion of expenditures for physician-administered drugs under Medicare, followed by drugs typically furnished incident to a urologist's service, a rheumatologist's service, a gynecologist's service, an infectious disease specialist's service, and a primary care physician's service. Drugs typically administered by other physician specialties represent smaller portions of physician-administered drugs. We therefore believe that the basic phase-in decision with respect to drugs administered in physician offices is whether to begin implementation of the program only with drugs typically administered by oncologists, or with some set of drugs that other specialties (for example, urology) tend to administer. We discuss each of these options below.

Begin with Drugs Used by a Single Physician Specialty: Oncology

Under this approach, we would initially implement the CAP for a limited set of drugs that are typically administered by oncologists. Drugs typically administered by other specialties would be included over the next few years of the program.

The advantage of this approach is that during the phase-in we could focus our implementation efforts on one specialty with a more homogeneous set of concerns and issues. Also, by limiting the target drugs to those typically administered by oncologists, the required physician education process would be streamlined and potentially more effective. In addition, oncologists use a high proportion of the physician-administered drugs that could be included under the CAP. By initiating a phase-in with drugs that are typically administered by oncologists, we could thus begin to realize much of the benefit that is possible under the CAP. Therefore, we believe that it would be reasonable to include drugs typically administered by oncologists in the early stages of implementing the CAP.

A potential disadvantage of singling out drugs typically administered by one physician specialty for the initial stages of phasing in the CAP is that the scope of the CAP in the early years may be too narrow for us to effectively identify issues or concerns for specialties that typically administer drugs not initially included. In addition, the CAP would not initially provide an alternative for physicians in other specialties. We welcome comments from oncologists and others about the merits of beginning the phase-in of the CAP with drugs typically administered by oncologists.

Begin with Specialties That Use Fewer Part B-Covered Drugs

An alternative phase-in approach would be to choose a limited set of drugs that are typically administered by one or more physician specialties that use Part B-drugs less intensively. Focusing on Part B drugs typically administered by physicians in these specialties would limit the scope of the initial implementation, and allow operational issues to be addressed more gradually. This more limited scope would allow us to identify lessons and issues before phasing in larger drug classes (such as drugs typically administered by oncologists) at a later time. The disadvantage of this approach, however, is that such a limited scope may also restrict the potential benefits of the CAP, especially potential savings to the Medicare program and potential benefits to physicians in other specialties who do not want to be in the drug procurement and drug coinsurance collection business and who would prefer to obtain drugs that they typically administer under the CAP. The restricted scope of this approach might not elicit a response from potential bidders if they believe that the potential market is too limited.

In light of these considerations, we are considering several alternative approaches to phasing in the CAP with respect to drug categories. One alternative would be to phase in the CAP by initially including all drugs typically administered by oncologists within the program. We would begin with drugs typically administered by oncologists primarily because these drugs constitute such a major portion of the physician-administered drugs under Part B. Another option is to begin with some set of the drugs that are typically administered in physician offices by other specialties (for example, drugs typically administered by urologists). This option would mean that implementation of the CAP would have a more limited impact initially on the provision and payment for Part B drugs than beginning with drugs typically administered by oncologists or with all Part B drugs furnished incident to a physician's service. A final option is to implement the CAP for all Part B drugs that are furnished incident to a physician's service. We are not considering categories smaller than drugs typically administered by a physician specialty. For the oncology option, for example, we are not considering to include only the top three oncology drugs. All drugs typically administered by oncologists would be included under this option.

We are actively considering all these options, but we are not proposing any particular option at this time. Rather, we encourage comments on all the options that we have discussed. We also welcome recommendations of other options for consideration, and will also consider other options presented by commenters for adoption in the final rule. We especially encourage comments from physicians concerning their preferences about how a phase-in should be designed and more generally how the categories of drugs under the CAP should be structured. For example, physicians may prefer relatively broad drug categories that encompass all the drugs that they commonly furnish, which presumably would allow those physicians to largely avoid purchasing drugs for their Medicare patients. Under this proposed approach one category of drugs might be all the drugs commonly furnished incident to an oncologist's (or other specialist's) service. Other narrower ways of structuring the categories are also possible. After further analysis and consideration of the comments, we may adopt one of the options described above, or an option brought to our attention through the comment process, in the final rule.

It is important to note that, if we choose to phase in the CAP by restricting the program initially to drugs typically administered by members of one specialty, all physicians who administer the drugs selected would still be eligible to elect to obtain these drugs through the CAP and to select a vendor of these drugs. For example, if we choose to phase in the program initially with drugs typically administered by oncologists, participation in the CAP would not be restricted to oncologists: non-oncologists who prescribe these drugs would still be eligible to elect the CAP and to select a vendor from which to obtain these drugs.

It is also important to note that the categories that are established for

physicians to select will be the same categories that would be open for bids by potential vendors. For example, if a category embracing all drugs typically administered by oncologists is established, vendors would bid on all the HCPCS codes contained in the category and an oncologist who elects to participate in the CAP would be electing to acquire that category from the vendor. Vendors would not be able to submit bids on only some of the HCPCS codes in the category, and physicians would not be able to elect to acquire only some of the HCPCS codes in that category from the vendor. Table 1 below illustrates a potential category.

TABLE 1.—MOST COMMONLY USED HCPCS BY ONCOLOGISTS DEFINED BY SPECIALTY CODE 90

[Using 2003 Medicare Claims Data, Allowed Services Greater Than 100 and Allowed Charges (Adjusted for 2005) Greater Than $10,000]

HCPC	Description	HCPC	Description
J0207	Amifostine.	J9040	Bleomycin sulfate injection.
J0637	Caspofungin acetate.	J9045	Carboplatin injection.
J0640	Leucovorin calcium injection.	J9050	Carmus bischl nitro inj.
J0696	Ceftriaxone sodium injection.	J9060	Cisplatin 10 mg injection.
J0800	Corticotropin injection.	J9062	Cisplatin 50 mg injection.
J0880	Darbepoetin alfa injection.	J9065	Inj cladribine per 1 mg.
J0895	Deferoxamine mesylate inj.	J9090	Cyclophosphamide 500 mg inj.
J1190	Dexrazoxane HCl injection.	J9096	Cyclophosphamide lyophilized.
J1260	Dolasetron mesylate.	J9160	Denileukin diftitox, 300 mcg.
J1440	Filgrastim 300 mcg injection.	J9170	Docetaxel.
J1441	Filgrastim 480 mcg injection.	J9178	Inj, epirubicin hcl, 2 mg.
J1450	Fluconazole.	J9181	Etoposide 10 mg inj.
J1626	Granisetron HCl injection.	J9182	Etoposide 100 mg inj.
J1642	Inj heparin sodium per 10 u.	J9185	Fludarabine phosphate inj.
J1645	Dalteparin sodium.	J9190	Fluorouracil injection.
J1650	Inj enoxaparin sodium.	J9201	Gemcitabine HCl.
J1655	Tinzaparin sodium injection.	J9202	Goserelin acetate implant.
J1745	Infliximab injection.	J9206	Irinotecan injection.
J1750	Iron dextran.	J9208	Ifosfomide injection.
J1756	Iron sucrose injection.	J9209	Mesna injection.
J2353	Octreotide injection, depot.	J9213	Interferon alfa-2a inj.
J2355	Oprelvekin injection.	J9214	Interferon alfa-2b inj.
J2405	Ondansetron hcl injection.	J3305	Inj trimetrexate glucoronate.
J2430	Pamidronate disodium/30 mg.	J9217	Leuprolide acetate suspension.
J2505	Injection, pegfilgrastim 6 mg.	J9265	Paclitaxel injection.
J2820	Sargramostim injection.	J9280	Mitomycin 5 mg inj.
J2997	Alteplase recombinant.	J9293	Mitoxantrone hydrochl/5 mg.
J3370	Vancomycin hcl injection.	J9310	Rituximab cancer treatment.
J3487	Zoledronic acid.	J9340	Thiotepa injection.
J9000	Doxorubic hcl 10 mg vl chemo.	J9350	Topotecan.
J9001	Doxorubicin hcl liposome inj.	J9355	Trastuzumab.
J9010	Alemtuzumab injection.	J9390	Vinorelbine tartrate/10 mg.
J9015	Aldesleukin/single use vial.	Q0136	Non esrd epoetin alpha inj.
J9017	Arsenic trioxide.	Q3025	IM inj interferon beta 1-a.
J9031	Bcg live intravesical vac.		

In addition, it is important to keep in mind that HCPCS codes describe products represented by multiple National Drug Codes (NDC). For example, the drug cyclophosphamide is manufactured by a number of different pharmaceutical companies and has multiple NDC codes.

As discussed in proposed § 414.908(d), we are proposing that vendors will not be required to provide every National Drug Code associated with a HCPCS code. Section 1847B(b)(1) of the Act states that ''in the case of a multiple source drug, the Secretary shall conduct such competition among entities for the acquisition of at least one competitively biddable drug and biological within each billing and payment code within each category for each competitive acquisition area.'' However, we are also proposing that vendors will be required to provide potential physician participants in the competitive acquisition program the specific NDCs within each HCPCS code that they will be able to provide to the physician. Potential vendors would also need to provide this same information to us as part of the bidding application. In addition, we are proposing that this information will be provided to physicians who request it no later than the beginning of the election period during which the physician chooses whether to participate in the CAP and, if so, selects a vendor. We anticipate that the first physician election process will occur in the fall of 2005.

Finally, we would like to emphasize that, in framing these options, we are relying solely on the Secretary's statutory authority under section 1847B(a)(1)(B) of the Act to establish categories of drugs that will be included in the CAP, and to phase in the program with respect to these categories. We do not propose to rely at this time on the Secretary's authority under section 1847B(a)(1)(D) of the Act to exclude competitively biddable drugs and biologicals from the CAP on the grounds that including those drugs and biologicals would not result in significant savings or would have an adverse impact on access to those drugs and biologicals. At this time, we have made no findings that including certain drugs in the CAP would not result in significant savings or would have an adverse impact on access to those drugs. We propose to set forth the circumstances for which we may exclude competitively biddable drugs and biologicals (including categories of

drugs) from the CAP at proposed § 414.906(b) of our regulations.

3. Competitive Acquisition Areas

Definition of Competitive Acquisition Areas

(If you choose to comment on issues in this section, please include the caption ''Competitive Acquisitions Areas'' at the beginning of your comments.)

Section 1847B(a)(1)(A)(i) of the Act provides that, under the competitive acquisition program (CAP), competitive acquisition areas are established for contract award purposes. Section 1847B(a)(2)(C) of the Act further defines the term ''competitive acquisition area,'' for purposes of the CAP, as ''an appropriate geographic region established by the Secretary.'' Section 1847B(b)(1) of the Act also requires that the Secretary conduct a competition among entities for the acquisition of at least one competitively biddable drug and biological within each billing and payment code within each category of competitively biddable drugs for each competitive acquisition area. Finally, section 1847B(b)(3) of the Act states that the Secretary may limit (but not below two) the number of qualified entities that are awarded contracts for any competitively biddable drug category and competitive acquisition area.

Under this statutory scheme, competitive acquisition areas (that is, the geographic areas the contractor would be responsible for serving) have an important role in the CAP. These areas constitute the geographic boundaries within which entities will compete for contracts to provide competitively biddable drugs. The definition of these areas will therefore be a crucial factor in determining—the number of entities that bid for contracts; the number of entities that are ultimately awarded these contracts; the level of savings from the successful bids; and the efficiency with which the system delivers competitively biddable drugs to physicians. At the same time, the statute grants the Secretary broad discretion in defining competitive acquisition areas under the CAP. We believe that several factors must be considered in defining competitive acquisition areas for competitively biddable drugs and biologicals. In particular, the designation of competitive acquisition areas are to take into account how promptly physicians need drugs provided to their practices if distribution capacity varies geographically. In addition, aspects of vendors and their distribution systems, such as current geographic service areas; density of distribution centers, distances drugs and biologicals are typically shipped, and costs associated with shipping and handling; the relationships between vendors and their suppliers (manufacturers, wholesalers, etc.); and state licensing laws that may preclude vendors from operating in a State are to be taken in account. These factors can affect the price of supplying drugs to different regions as well as the size of the market in which vendors are allowed or able to operate.

Section 1847B(a)(1)(B) of the Act specifically requires the Secretary to phase in the CAP with respect to the categories of drugs and biologicals in the program, in such a manner as the Secretary determines to be appropriate. We believe that this provision, particularly in conjunction with the statutory definition of ''competitive acquisition area'' (''an *appropriate* geographic region *established by the Secretary*'') (emphasis added), provides broad authority for the Secretary to phase in the CAP with respect to the geographical areas in which the program will be implemented. Below we discuss several options for defining ''competitive acquisition areas'' for purposes of the CAP. Each of these definitions could be adopted initially in a manner that allows for the program to be phased in geographically. For example, defining ''competitive acquisition areas'' in terms of regions or in terms of States is compatible with phasing in the program by implementing it initially in one or more, but not all, regions or States. Under this phase-in plan, the program would eventually be expanded to all regions or States. Conversely, the program could be phased in by initially employing a national competitive acquisition area. This would limit participation in the program initially to those vendors that could compete to bid and supply drugs nationally, to the exclusion of the vendors that could bid and supply drugs on a regional or State basis. Under this phase-in plan, the definition of competitive acquisition area would ultimately be established on the basis of regions, States, or some other smaller geographic area, which might expand the number of vendors that could bid to participate in the program.

We have identified several basic options for defining the competitive acquisition areas required under the CAP. The basic options for defining these areas include—establishing a national competitive acquisition area; establishing regional competitive acquisition areas; and establishing statewide competitive acquisition areas. We invite comment on these possible approaches.

National Competitive Acquisition Area

Under this option, the competitive acquisition program would require participating vendors to offer competitively biddable drugs and biologicals to physicians in any State within the United States, as well as the District of Columbia, Puerto Rico, and the U.S. territories. In other words, there would be only a single national competitive acquisition area. Bidders that seek to compete in a national competitive acquisition area would need a national network of distribution points that could serve physicians in a timely manner with products that are properly stored and shipped. In addition, drug vendors would need to be appropriately licensed in all 50 States, the District of Columbia, Puerto Rico, and the U.S. territories in order to comply with FDA rules.

Establishing a single national competitive acquisition area may have several advantages. First, in a single national area, the number of Medicare beneficiaries and physicians is sufficiently large to encourage vendors to participate to gain market share. This option may also impose less administrative burden on potential bidders than other options, because all applicants would be applying for contracts to cover the same region. The administrative burden on CMS might also be less: the fewer the number of acquisition areas, the fewer bids that must be submitted and evaluated. However, smaller regional drug distributors would be less likely to participate in the CAP under this option, because they may not be able to serve the entire country. This would reduce competition in the bidding process.

Regional Competitive Acquisition Areas

Under this general category, there are several possible options. One option is that we could establish multi-State acquisition areas based on existing markets. Under this option, we could define acquisition areas based on existing markets of regional distributors and specialty pharmacies. As an alternative regional approach, we could define four large competitive acquisition areas, which would limit the administrative burden of implementation. With just four acquisition areas, it may be less likely that there would be an insufficient number of vendors in any one area. We could also determine competitive acquisition areas that coincide with the prescription drug plan regions

established under section 1860D–11 of the Act (*http://www.cms.hhs.gov/medicarereform/mmaregions/*) for more information.

Establishing sub-national regions could be a natural first step in a geographic phase-in of the program. As discussed above, for example, we could implement the CAP in only a few areas at first. Overcoming challenges in the first phase would be important in gaining wide physician and vendor participation and successful implementation on a large scale. If we chose this approach, we would consider factors such as the number of potential bidders, the capacity of existing distribution networks, and the distribution of physician specialties in selecting a limited geographic area for the first competitive acquisition bidding process. This approach would also allow regional distributors to participate more easily in the CAP, thereby potentially increasing competition in the bidding process.

However, this approach may impose additional administrative burden on national vendors since they may need to submit multiple bids to cover the entire country.

Competitive Acquisition Areas Based on Single States

Under this option, we would define CAP areas based on State boundaries, the District of Columbia, Puerto Rico, and the territories. This option has the advantage of using clearly defined geopolitical borders as the basis for acquisition areas. As we have noted, current licensing for specialty pharmacies and vendors operates at the State level. Also, establishing State-based regions could support a geographic phase-in of the program, and we could implement the CAP in only some States at first. (As in the case of a possible phase-in of a region-based approach, we would consider factors such as the number of potential bidders, the capacity of existing distribution networks, and the distribution of physician specialties in selecting one or more States for the first competitive acquisition bidding process.) Overcoming challenges in the first phase would be important in gaining wide physician and vendor participation and successful implementation on a large scale. This approach would also allow State-based regional distributors to more easily participate in CAP, thereby potentially increasing competition in the bidding process.

We encourage comments on all the options that we have discussed. We also welcome recommendations of other options for consideration. We believe that defining competitive acquisition areas, at least initially, on the basis of a level no smaller than the States is the most feasible approach. To our knowledge, there are few, distributors of drugs administered incident to physician services that operate on a scale smaller than a State level. However, we welcome comments on this issue, and all other aspects of this discussion. We are still considering all the options described above, and will also consider other options presented by commenters. After further analysis and consideration of the comments, in the final rule, we may adopt one of the options described above, or an option brought to our attention through the comment process.

B. Operational Aspects of the CAP

1. Statutory Requirements Concerning Claims Processing

[If you choose to comment on issues in this section, please include the caption ''Statutory Requirements Concerning Claims Processing'' at the beginning of your comments.]

Section 1847B(a)(3)(A) of the Act sets forth specific requirements that have a direct impact on the administrative and operational parameters for instituting a CAP. This section of the statute requires the following: (1) Vendors participating in the Part B Drug Competitive Acquisition Program bill the Medicare program for the drug or biological supplied, and collect any applicable deductibles and coinsurance from the Medicare beneficiary. (For purposes of this preamble the term ''vendor'' means the term ''contractor'' as referred to in the statute.) (2) Any applicable deductible and coinsurance may not be collected unless the drug was administered to the beneficiary. (For purposes of this preamble the term ''drug'' refers to drugs and biologicals) (3) Medicare can make payments only to the vendor and these payments are conditioned upon the administration of the drug.

In addition, the Secretary is required to provide for a process for adjustments to payments in those cases when payment was made for the drugs, but they were not actually administered to the beneficiary. The Secretary is also required to provide a process by which physicians submit information to vendors for purposes of the collection of applicable deductible or coinsurance. Payment may not be made for competitively biddable drugs supplied to a physician who has elected to participate in CAP unless the vendor supplying the drugs has a contract to provide them in that geographic area and the physician receiving them has elected the vendor to supply that category of drug in that geographic area.

Section 1847B(b)(4)(E) of the Act requires that the vendor only supply drugs directly to the selecting physicians and not directly to individuals, except under circumstances and settings where the individual currently receives drugs in his or her home or another non-physician office setting, as provided by the Secretary. In addition, the vendor may not provide drugs to a physician participating in the CAP, unless the physician submits a written order or prescription, and any other data specified by the Secretary, to the vendor. However, the statute also makes it clear that the physician is not required to submit an order (prescription) for individual treatments of a drug or biological, and that the statute is not intended to change a physician's flexibility to choose whether to write a prescription for a single treatment or a course of treatments. In certain sections of this proposed rule, we have used the term prescription and the term order interchangeably. Section 1847B of the Act uses the term ''prescription'' but does not define it. For purposes of the CAP, we propose to interpret the term to include a written order submitted to the vendor. We note that section 1847B(b)(4)(E) of the Act, in requiring that vendors deliver drugs only upon receipt of a ''prescription,'' expressly indicates that the statute does not ''require a physician to submit a prescription for each individual treatment'' or ''change a physician's flexibility in terms of writing a prescription for drugs or biologicals for a single treatment or a course of treatment.'' It is not our intention to restrict the physician's flexibility when ordering drugs from a CAP vendor, or to require that a physician participating in CAP would order drugs differently from a CAP vendor than he or she would a non-CAP vendor. (For purposes of this preamble the term ''order'' and ''prescription'' are used interchangeably.)

Section 1847B(b)(5) of the Act requires the Secretary to establish rules under which drugs acquired under the CAP may be used to resupply inventories of these drugs administered by physicians. This process will apply only if the physician can demonstrate all of the following to the Secretary: the drugs are required immediately, the physician could not have anticipated the need for the drugs, the vendor could not have delivered the drugs in a timely manner, and the drugs were administered in an emergency situation.

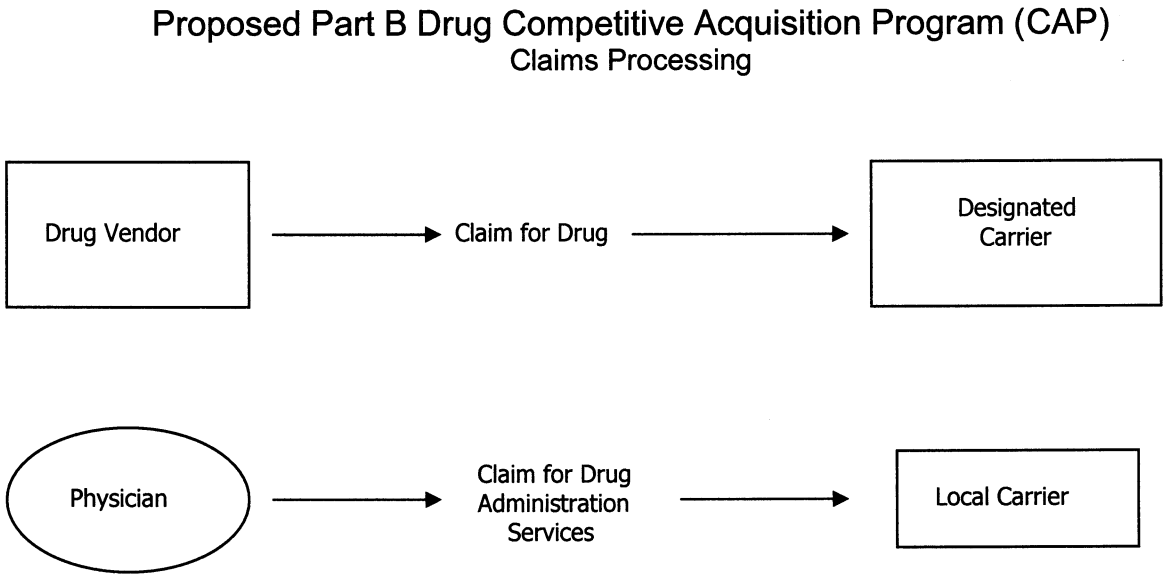
2. Proposed Claims Processing Overview

[If you choose to comment on issues in this section, please include the caption ''Claims Processing Overview'' at the beginning of your comments.]

To comply with the statutory requirements described above, we propose to implement a claims processing system that will enable selected vendors to bill the Medicare program directly, and to bill the Medicare beneficiary and/or his or her third party insurance after verification that the drug has been administered. We propose to set forth the requirements for payment under the CAP at proposed § 414.906 of our regulations. For the initial implementation of the CAP, we plan to designate one Medicare fee-for-service claims processing carrier to process all drug vendor's Medicare claims. (In this preamble this entity will be referred to as the designated carrier.) Physicians who elect to participate in the program will continue to bill their local Medicare fee-for-service claims processing carrier for physicians' services.

This proposed rule uses the term ''carrier'' to describe an entity that processes Medicare benefit claims and performs related functions under Part B. These entities may service a particular type of provider, or they may service all Part B suppliers within a specified geographic area.

The designated carrier and the physician's local carrier would each be charged with keeping track of the physician's vendor selection and making sure that the physician is administering drugs provided by the vendor with whom he or she has elected to participate. This process also would involve our central claims processing system. The following diagram describes the procedures for claims processing under the CAP.



At this time we are proposing to incorporate only drugs incident to a physician's service into the CAP. As noted earlier in section II.B.2. of this preamble, we are seeking comment on a broader definition of ''competitively biddable drugs''. As described below, consistent with the statute, we propose that when a physician who has elected to participate in the CAP prepares an order for a drug to be administered to a Medicare beneficiary, the physician would provide basic information about the beneficiary and the beneficiary's third party insurance to the drug vendor.

As we specify at proposed § 414.906(a)(4) of our regulations, we are proposing that CAP vendors would deliver drugs directly to physicians in their offices. Although the statute allows CMS to provide for the shipment of drugs to other settings under certain conditions, we are not proposing to implement the CAP in alternative settings at this time.

The vendor would use order form information to bill the beneficiary and/or his or her third party insurance for applicable deductible and coinsurance after drug administration has been verified by the Medicare carrier.

The claims processing methodology we propose to implement would verify drug administration to the beneficiary by means of a prescription number that would be placed on the physician claim for drug administration and the drug vendor claim for the drug. Our claims processing system would use the prescription number to match the two claims and authorize payment to the vendor.

We propose that the physician could place an order for a beneficiary's entire course of treatment at one time however; the vendor may split the order into appropriately spaced shipments. The vendor would create a separate prescription number for each shipment and the physician would track each prescription number separately and place the appropriate prescription number(s) on each drug administration claim. The physician would also have the ability to modify the course of treatment and submit a separate order as necessary.

The drug vendor would generate the prescription number when it prepares the drug for shipping. The drug and prescription number would be shipped to the physician and would be maintained until the date of drug administration. At the time the drug was administered to the beneficiary, the physician or his or her staff would place the prescription number for each drug administered on the claim form. Similarly, when the vendor billed Medicare for the drug it shipped to the physician, it would place the relevant prescription number on the claim form. The electronic version of the Medicare carrier claim form has space for a series

of prescription numbers, which CMS has not utilized previously for Part B drugs.

As part of implementing the CAP program, we would require that vendors and physicians who elect to participate in CAP have the capability of submitting these prescription numbers to us in their claims processing systems. If physicians and potential vendors are not already billing other payors using prescription numbers, they would need to work with their internal information systems staff or practice management software vendors to make the necessary changes to submit these data elements to Medicare in a manner consistent with HIPAA transaction guidelines for capturing prescription numbers.

Our claims processing methodology would use the prescription number to match the two claims and authorize payment to the vendor. Under our proposed approach, payment to the vendor would be dependent upon the filing of the drug administration claims by the physician, and the physician's claim being approved for payment by the CMS claims processing system. We are seeking public comment on whether there are demonstrable, compelling reasons why CMS should consider making a partial payment to the vendor in cases where the drug administration claim is not received by the CMS claims processing system within 28 calendar days of the anticipated date of administration. We are also seeking public comment on what the appropriate percentage of the partial payment should be.

Although we are not proposing to make a partial payment at this time, the following section describes how we would propose that the partial payment methodology would work, if we decide to implement this option. After the designated carrier makes the partial payment, the CMS claims processing system would continue to attempt to match the physician claim and the vendor claim for 90 days. We would not pay interest on interim payments. If a match of the two claims occurred, the vendor would receive Medicare payment for the remaining amount of money due on the claim. If no match between the two claims was made within 90 days, recovery of the amount already paid by Medicare would occur using normal Medicare overpayment recovery processes.

As required by the statute, the vendor would not be allowed to bill the beneficiary and/or his or her third party insurance for any applicable deductible and coinsurance until the Medicare carrier had verified that the physician has administered the drug to the beneficiary, and final payment is made by the Medicare program. Proof that the drug was administered to the beneficiary would be established by the physician's claim being matched with the drug vendor's claim in the Medicare central claims processing system. After the two claims are matched the claims processing system would notify the designated carrier to issue final payment to the vendor. The obligation to pay interest on a clean claim would not arise until drug administration had been verified by the Medicare claims processing system. We propose that issuance of final payment by the Medicare program would serve as notification to the vendor that drug administration had been verified and that the vendor could proceed with billing the beneficiary or his or her third party insurance.

We propose that in accordance with section 1847B(b)(5) of the Act, in emergency situations drugs acquired under the CAP could be used to resupply inventories of drugs administered by physicians. We propose that this process would apply if the physician could demonstrate all of the following to the local carrier: (1) The drugs were required immediately. (2) The physician could not have anticipated the need for the drugs. (3) The vendor could not have delivered the drugs in a timely manner. (4) The drugs were administered in an emergency situation.

As discussed in section C.2.a. of the preamble, we are seeking public comment on how to define timeframes for timely delivery, and for emergency delivery.

We propose that in emergency situations that met the criteria outlined above, the physician would treat the Medicare beneficiary with a drug from his or her own stock. After administering the drug to the beneficiary, the physician would prepare an order, identifying the drug as an emergency replacement. When the drug was received from the vendor the physician would return the drug to his stock. Both the physician and the vendor would bill normally for the drug or its administration as applicable. We seek comment on the additional criteria we will use to define the replacement process.

We also propose to allow the physician to obtain a drug under the ASP methodology in ''furnish as written'' cases when medical necessity requires that a specific formulation of a drug be furnished to the patient. This situation closely parallels dispense as written (DAW) prescription orders. In cases when the vendor has not been contracted to furnish a specific formulation of a drug or a product defined by the product's NDC number, and the specified product is medically necessary, the physician could purchase the product for the beneficiary from a source other than the CAP vendor and bill Medicare for it using the ASP methodology. We would establish this method of alternative payment for a competitively biddable drug under proposed § 414.906(c)(2) of our regulations.

We propose that physicians who elect to participate in the CAP would continue to bill their local carrier for drug administration. In addition, we are proposing that for those drugs that are not included in the CAP, and for drug categories that the physician does not select, the physician would continue to bill and be paid under the ASP methodology. We are seeking public comment on whether physicians must obtain all categories of drugs that a particular CAP vendor provides from the vendor, or whether the physician should be allowed to choose the categories drugs he wishes to obtain from the vendor.

Some physicians have expressed concern that participation in the CAP would be administratively burdensome, for example, involve clerical and inventory resources. We do not believe that the clerical and inventory resources associated with participation in the CAP exceed the clerical and inventory resources associated with buying and billing drugs under the ASP system. The payment for clerical and inventory resources associated with buying and billing for drugs under the ASP system is bundled into the drug administration payment under the physician fee schedule. Taking these factors into account we are not proposing to make a separate payment to physicians for the clerical and inventory resources associated with participation in the CAP program.

In addition, we propose to require prompt claim filing on the part of physicians who elect to participate in the CAP in order to facilitate the match between the physician claim and the drug vendor claim so that drug administration can be verified. Statistics obtained from Medicare claims filing data indicate that more than 75 percent of physician's claims are currently filed within 14 days of the date of service. We propose that in their CAP election agreements, physicians who choose to participate in CAP would be required to agree to bill their claims within 14 calendar days of the date the drug was administered to the beneficiary, unless extenuating circumstances prevented

them from filing the claim. We seek public comment on how we should define the extenuating circumstances.

All drug vendors would submit their claims to the designated carrier who would be designated to receive them.

After a physician saw a Medicare beneficiary and ordered a CAP drug, the physician would check that he or she was planning to use the drug consistent with any local coverage determination policies (LCDs), just as he or she would do now if obtaining a drug under the current payment methodology. The physician would prepare a drug order and forward it to the drug vendor.

The order transmitted between the physician and the drug vendor may occur in a variety of HIPAA-compliant formats, such as by telephone with a follow-up written order. We propose that the physician would transmit the following information to the CAP drug vendor from whom he or she has elected to receive drugs. Abbreviated information could be sent for repeat patients.

- Date of order
- Beneficiary name
- Physician identifying information

Name, practice location, group practice information (if applicable), PIN and UPIN

- Drug name
- Strength
- Quantity ordered
- Dose
- Frequency/instructions
- Anticipated date of administration
- Beneficiary Medicare information/ Health insurance (HIC) number
- Supplementary Insurance info (if applicable)
- Medicaid info (if applicable)
- Shipping address
- Additional Patient Info: date of birth, allergies, Ht/Wt/ICD–9, etc.

We are interested in receiving comments on the information we are proposing to require as well as any additional information that might be necessary.

In emergency replacement situations, the physician would also make a notation on the order that the drug was a replacement for a drug already administered to the beneficiary. This notation may involve the use of a modifier to a HCPCS code, or another standardized means of incorporating the information into a claim. The vendor would prepare the drug order, assign the unique transaction identification (or prescription) number and ship the replacement product to the physician. Standard CAP billing and claim processing procedures would follow. We anticipate that the physician's carrier would, at times, conduct a post payment review of emergency drug replacement in order to determine whether physicians were complying with conditions for emergency drug replacement.

We propose that in ''furnish as written'' situations, when the physician has determined that it is medically necessary to use another brand of product within the HCPCS or a product with an NDC that is not being furnished by the vendor that the physician would be allowed to bill for the drug under ASP, even though he or she had elected to participate in the CAP. We propose that the physician would obtain the specific product through normal distribution channels and bill the product using the ASP methodology. The physician would be instructed to place a ''furnish as written'' modifier on his or her claim form and bill his or her Medicare carrier for the drug and the administration fee. The modifier would alert the carrier to allow the physician to bill under ASP in this case. We anticipate that the physician's carrier would, at times, conduct a post payment review of the use of the ''furnish as written'' modifier. If the carrier determined that the physician had not complied with furnish as written requirements and that a specific NDC or brand name drug was not medically necessary, the carrier could deny the claim for the drug and the administration fee.

After the physician submitted an order for the drug, the drug vendor would receive it and check the physician's CAP eligibility from a list provided by the designated carrier and would verify the beneficiary's Medicare eligibility with the designated carrier.

After those checks were completed, the vendor would generate a prescription number that would include the vendor's assigned identification number and the drug HCPCS code. The vendor would assemble the order and prepare it for shipping. The vendor would ship the drug to the physician using a delivery method specified by its contract with CMS.

We anticipate that the physician's office staff would receive the CAP drug(s) and store them until the time of administration. Although the statute discusses a patient-specific drug ordering process, it does not address the methods that may be used to store and inventory drugs in an office or clinic setting, or the potential burden associated with storing a patient's CAP drugs separately from other drugs. We believe that less burdensome alternatives to keeping separate inventories exist; however, any alternatives would be required to maintain program integrity and product integrity and to minimize the risk of diversion, and medication errors. We do not believe that separate physical storage of CAP drugs is required. However, we are proposing that physicians participating in the CAP would be required to maintain a separate electronic or paper inventory for each CAP drug obtained. We seek public comment on additional requirements that we should impose on maintaining CAP inventory.

If for some reason the drug could not be administered to the beneficiary on the expected date of administration, we propose that the physician would notify the vendor and reach an agreement on how to handle the unused drug, consistent with applicable State and Federal law. The notification would also serve to inform the vendor not to submit a claim for the drug. If the vendor and the physician agreed that the drug could be maintained in the physician's inventory for administration to another Medicare beneficiary at a later time, the physician would generate a new order form at that time. Included in the order would be a notation that the drug was being obtained from the physician's inventory of the vendor's drugs and that the vendor need not ship the drug.

We note that billing beneficiaries for applicable deductible and coinsurance would not be allowed at the time the drug is administered at the physician's office as is the current customary practice outside of the CAP. The statute requires that the vendor bill Medicare and the beneficiary, and that the beneficiary may not be billed until after the drug has been administered to the beneficiary. As discussed earlier, we are proposing that the vendor be allowed to bill the beneficiary and/or his or her third party insurance after drug administration has been verified by matching the physician claim with the vendor claim using the prescription number, and final payment is made by the Medicare program.

After administering the drug, the physician would submit a claim to his or her local carrier for drug administration. We propose that the claim would include the drug administration fee, the HCPCS code for the drug administered, the prescription number for each drug administered, and the date of service.

The local carrier would adjudicate the claim and check that the physician was billing for appropriate drugs from the selected drug vendor, and that the claim was compliant with all local coverage determinations (LCDs). If the physician's claim failed LCD edits, the local carrier would deny the claim and

would notify the central CMS claims processing system that the drug vendor's claim for the drug should not be paid.

If the claim passes all edits, the local carrier would forward it to the CMS central claims processing system for additional editing and approval for payment.

After shipping the drug to the physician, we propose that the drug vendor would file a claim for the drug with the designated carrier no sooner than the expected date of administration. The claim form would contain the prescription number for each drug administered to the beneficiary on one calendar date, the unique provider identification number (UPIN) for the physician to whom the drug was supplied, and the expected date of service.

The designated carrier would submit the claim to the central claims processing system after the claim had passed all edits.

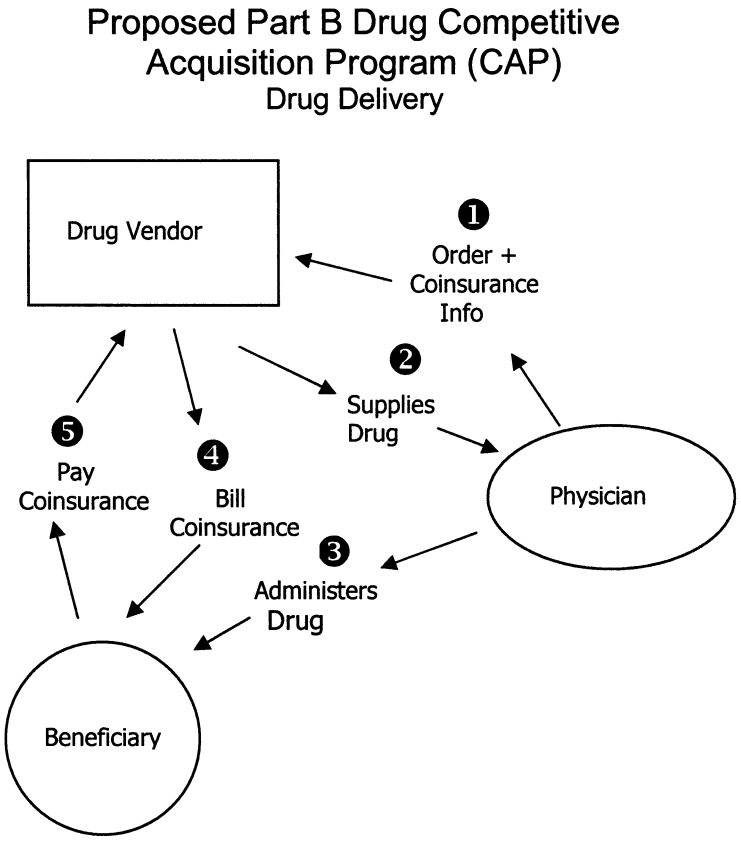
The central claims processing system would match the physician claim with the vendor claim using the prescription number. If the physician claim for administering the drug had not been received in the central claims processing system but the vendor claim had received initial approval for payment, the claims processing system may pay the vendor a percentage of the claim payment amount. (**Note:** At this time, we are not proposing to implement a partial claims payment. However, as described earlier in this section, we are seeking comments on compelling reasons for making such a payment. The following section describes the process that we would follow if a partial payment methodology were implemented.)

If CMS decides to make an initial payment to the vendor, the vendor would be paid for the remaining amount of the claim when the physician's claim was matched with the vendor claim in the claims processing system. We note that CMS would not pay interest on partial payments.

If the physician's claim was not received within 90 days, or the claim was not approved for payment, the initial partial payment made to the vendor would be recouped using CMS overpayment recovery processes.

As noted previously, after the Medicare program makes the final payment, the vendor would be allowed to bill the beneficiary or the beneficiary's third party insurance, or both.

The following diagram demonstrates the proposed delivery system:



3. Dispute Resolution

[If you choose to comment on issues in this section, please include the caption ''Dispute Resolution'' at the beginning of your comments.]

Section 1847B of the Act is generally silent with regard to the treatment of disputes surrounding the delivery of drugs and the denial of drug claims. Section 1847B(b)(2)(A)(ii)(II) of the Act does contain a reference to a grievance process which is included among the quality and service requirements expected of vendors.

We have given substantial consideration to the applicability of the Medicare Part B administrative appeals process found at 42 CFR 405.801 *et seq.* We believe the traditional Part B appeals process continues to be the appropriate dispute resolution process for beneficiaries and physicians seeking review of drug administration claims that have been denied by the local carrier for any of the reasons described

in § 405.803(a). Those reasons include the following: (1) Services were not a covered benefit; (2) Deductible was not met; (3) No evidence of acceptable payment; (4) Charges for services were unreasonable; and (5) Services furnished were not reasonable and necessary.

We see several reasons why disputes raised by the vendor regarding the nonpayment of a drug claim by the designated carrier cannot be adjudicated by application of the traditional Part B appeals process. First, the designated carrier's denial is based on the lack of a unique prescription ID number match in the central claims processing system. This reason does not meet any of the appeal criteria in § 405.803(a). Second, given the ministerial aspect of the designated carrier's prescription number matching task, an informal process focused on getting the underlying physician drug administration claim properly filed and adjudicated is a more effective remedy. Finally, we believe application of the progressive alternative dispute resolution process described below represents a better use of program administration resources.

We encourage physicians, beneficiaries and vendors to use informal communication to resolve service-related administration issues that occur in a delivery and payment system of this complexity. However, we recognize a certain percentage of these disputes will require the intervention of a neutral third party. Our proposed dispute resolution process is set forth in regulations at proposed § 414.916.

a. *Resolution of Vendor's Claim Denial.* The physician has exclusive control of the claim filed with the local carrier for drug administration services.

The vendor will not be a party to the appeal a physician may file if his or her drug administration claim is denied. The vendor's drug claim may be denied by the designated carrier if there is no unique prescription number match in the central claims processing system. The vendor cannot bill Medicare for the cost of a drug and cannot bill the beneficiary for the appropriate deductible or coinsurance.

The vendor may track its business with the individual physicians who order drugs. When a vendor is not paid and the total dollar amount of the vendor's loss exceeds an acceptable threshold, then the vendor may ask the designated carrier to counsel the physician on his or her obligation under the CAP election agreement to file a clean claim and pursue an administrative appeal in accordance with his or her CAP participation agreement. The particulars of the participating CAP physician's CAP election agreement are outlined in § 414.908(a)(3) of our regulations. We seek comment on the appropriate amount for the vendor's loss threshold. If problems persist, we propose the vendor may ask the designated carrier to review the situation and potentially recommend a suspension of the physician's CAP participation agreement. The designated carrier will gather and review the relevant facts, and make a recommendation to CMS on whether the physician has been filing his or her CAP administration claims in accordance with the requirements for CAP participation. We would review the recommendation of the designated carrier and, if necessary, gather additional information before deciding whether to revoke the physician's election to participate in the CAP for a period not to exceed the end of the following CAP election cycle.

The physician may appeal our initial decision through the process articulated in proposed § 414.916.

b. Resolution of Physicians' Drug Quality and Service Complaints. Issues connected with drug quality will be given a top priority. Both the vendor and the designated carrier will be required to have qualified staff available to address drug quality complaints upon their receipt. The physician's first point of contact for quality related issues will be the vendor. If the issue is not resolved to the physician's satisfaction through the vendor's grievance process, the physician may escalate the matter to the designated carrier immediately.

We recognize the physician's need for a process to treat vendor service issues as well. Service issues may include timeliness of delivery and quantity of the drug ordered. We propose that a physician be allowed to request intervention from the designated carrier. We propose the designated carrier will attempt to develop solutions that will satisfy both parties. The designated carrier will create a quarterly compendium of the issues and solutions to share with us.

c. Resolution of Beneficiary Billing Issues. The beneficiary would receive a medical summary notice (MSN) from the local carrier indicating whether the physician's drug administration claim has been paid or denied. If the drug administration claim has been denied, the MSN will reflect a message instructing the beneficiary no deductible or coinsurance may be collected for the drug. If the beneficiary receives a bill for coinsurance from the vendor, the beneficiary may participate in the vendor's grievance process to request correction of the vendor's file. If the beneficiary is dissatisfied with the result of the vendor's grievance process, the beneficiary may request intervention from the designated carrier. The designated carrier will first investigate the facts and then facilitate correction to the appropriate claim record and beneficiary file. If the vendor requires targeted education on the subject of beneficiary billing the designated carrier will initiate that effort.

C. CAP Contracting Process

1. Quality and Product Integrity Aspects

[If you choose to comment on issues in this section, please include the caption ''Contracting Process-Quality and Product Integrity Aspects'' at the beginning of your comments.]

Sections 1847B(b)(2), 1847B(b)(3), and 1847B(b)(4) of the Act address the issue of quality under the competitive acquisition process at both the product and vendor level. We propose to use the evaluation process to ensure that these quality aspects are met.

a. Information to Assess and Ensure Quality. Sections 1847B(b)(2)and 1847B(b)(3) of the Act specifically require that potential CAP vendors meet financial and quality of care requirements aimed at assuring the stability and safety of the CAP program. Section 1847B(b)(2)(A) of the Act requires that vendors have sufficient capacity to acquire and deliver drugs in a timely manner within the geographic area, to deliver drugs in emergency situations, and to ship drugs at least 5 days each week. This section also requires that vendors meet quality, service, financial performance, and solvency standards, which include having procedures for dispute resolution with physicians and beneficiaries regarding product shipment, and having an appeals process for the resolution of disputes. We propose that CMS be allowed to suspend or terminate a vendor's contract if the vendor falls out of compliance with any of these quality requirements. Section 1847B(b)(2)(B) of the Act states that the Secretary may refuse to award a contract, and may terminate a contract if the entity's license to distribute drugs (including controlled substances) has been suspended, or revoked, or if the entity is excluded from participation under section 1128 of the Act. We note this requirement is enforced through the routine provider enrollment form monitoring process. Finally, section 1847B(b)(3)(C) of the Act states that the ability to ensure product integrity must be included in the criteria for awarding vendor contracts.

At a minimum, we seek to define a set of overall financial and quality standards that would ensure that reputable, and experienced vendors are chosen to participate in the CAP. These features are important for a number of reasons. Physicians would be reluctant to participate in the CAP if they have little confidence that CAP vendors would be reliable and provide quality CAP products. Also, given the importance of the drugs and biologicals currently covered under Medicare Part B to beneficiaries, CAP vendors would be required to provide quality products in a timely manner.

Section 1847B(b)(4)(C) of the Act specifies that any contractor selected for this program ''shall (i) acquire all drugs and biological products it distributes directly from the manufacturer or from a distributor that has acquired the products directly from the manufacturer; and (ii) comply with any product integrity safeguards as may be determined to be appropriate by the Secretary.'' We propose to include this requirement in the contracts signed between CMS and vendors providing drugs or biologicals under this section. However, we invite comment on what records or other evidence that bidders would be required to furnish and approved vendors would be required to maintain during the contract period.

b. Product Integrity. Section 1847B(b)(3)(C) of the Act states that the Secretary must consider the ability of the applicant to ensure product integrity. We propose that the evaluation include, but not be limited to, the applicants' ability to assure that products are not adulterated, misbranded, spoiled, contaminated, expired, or counterfeit. This means that at a minimum, all drugs and biologics utilized in this program must be licensed under section 351 of the Public Health Service Act or approved under section 505 of the Federal Food, Drug, and Cosmetic Act. Vendors would also be required to comply with sections 501 and 502 of the Federal Food, Drug, and Cosmetic Act concerning adulteration and misbranding.

Additionally, applicants would be required to employ trained personnel, have appropriate physical facilities, and utilize adequate security measures to assure that processing, handling, storage, and shipment of drugs and biologicals are adequate to maintain product integrity. Because Federal statutory and regulatory requirements are designed to meet the standards in the paragraph above, we propose to require that all applicants comply with State licensing requirements and be in full compliance with any State or Federal requirements for wholesale distributors of drugs or biologics in States where they furnish drugs for the CAP.

Although we are not proposing to require applicants to employ measures beyond those required for licensure and regulatory compliance, we do believe those are a minimum standard, and we will request that applicants discuss any additional measures they have taken to assure product integrity. For a more complete discussion of measures available for wholesale distributors to deter and detect counterfeit drugs, we ask applicants to review the report on counterfeit drugs issued by the Food and Drug Administration (FDA) on February 18, 2004. This report, ''Combating Counterfeit Drugs,'' is available on the FDA Web site at *http://www.fda.gov/counterfeit.* At this time, we propose that applicants describe measures taken to ensure drug product integrity on the vendor application form.

Examples of additional measures that pose minimal burden, but greatly enhance the ability to detect adulterated, misbranded or counterfeit drugs that wholesale distributors have taken to assure product integrity include the following:

—Complying with the ''Recommended Guidelines for Pharmaceutical Distribution System Integrity'' developed by the Healthcare Distribution Management Association, available at *www.healthcaredistribution.org.* Among other things, these guidelines contain recommended measures for due diligence to ensure the integrity and legitimacy of supply chain business partners including the performance, by a wholesale distributor, of extensive corporate and personnel background checks as well as a physical facility inspection of another wholesale distributor prior to entering into a business relationship.

—Cooperating with Federal and State authorities in their investigations of suspected counterfeit drugs.

—Establishing mechanisms to obtain timely information about suspected counterfeits in the marketplace and to educate their employees on how to identify them.

—Notifying appropriate State and Federal authorities within 5 business days of any suspected counterfeit products discovered by the wholesaler.

c. Financial Performance and Solvency Standards. Section 1847B(b)(2) of the Act discusses the financial performance and solvency standards we must develop for entities that seek to become vendors. We propose to fold integrity and internal control aspects of fiscal responsibility into this analysis.

While licensure by the State to distribute drugs may assess some degree of financial responsibility, we believe the focus and depth of financial capability evaluations associated with licensure may vary across States. We seek to assess bidders' financial solvency in a consistent manner that will demonstrate appropriate scrutiny without creating unnecessary burden on the bidders. We propose using criteria from the Federal Acquisition Regulation (FAR) Section 9.104 and following standards for ''responsible contractors'' as a baseline standard. The FAR standards also contain nonfinancial components that address areas such as integrity, performance, and ethics. We seek to add standards that would demonstrate the following:

—*Overall Capitalization and Financial Capability.* We propose that bidders furnish a copy of their most recent year's audited financial statements. Specific items, such as net worth, could be used in the evaluation process. We seek comment on the potential validity of specific financial indicators for this process and whether or not specific thresholds would be applicable. We also seek comment on this overall requirement from potential bidders, such as group purchasing organizations (GPOs), who do not routinely take possession of drug products.

—*Working Capital.* We propose to review the audited financial statements to determine if the bidder has adequate working capital to meet contractual obligations. Ratios of current assets to current liabilities, total liabilities to net worth, and cash or cash equivalents to current liabilities are commonly used to assess financial capability (see the form at FAR 53.301–1407). Given the 3-year contract duration, we seek comments regarding the appropriateness of these tests, and thresholds to apply for the ratios.

—*Record of Integrity.* We propose that the bidders supply us with applicable information on whether any of the bidder's Board of Directors, employees, affiliated companies, or subcontractors—

• Know they are under investigation by any State, Federal, or Local Government agency related to a fraud issue; and

• Have escrowed money in anticipation of, or entered into a

settlement agreement or corporate integrity agreement with any State or Federal Government agency related to a fraud issue.

We would also request bidders to provide a conflict of interest mitigation plan to address financial relationships the bidder may have with manufacturers of drugs or biologicals in the CAP.

—*Internal Control.* We propose to review information relating to the establishment and effectiveness of the bidder's internal control system designed to provide reasonable assurance financial and compliance objectives. Examples of information that we may review as evidence of the design and effectiveness of a bidder's internal control system include previous Statement on Auditing Standards 70 review results, independent third party reviews of the system, or other related information as we deem appropriate.

We propose to set forth these requirements in regulations at proposed § 414.908.

Deemed Compliance

Some vendor applicants may already be subject to financial oversight by one or more State or Federal regulators. The vendor's current financial reporting may satisfy one or more of the above requirements. We propose to request documentation of this parallel oversight together with contact information for the regulator. We would contact the regulator to inquire as to the vendor's status and we may deem certain portions of the above requirements ''met'' at our discretion.

2. Bidding Entity Qualifications

a. Quality and Financial Information—Vendor Application.

[If you choose to comment on issues in this section, please include the caption ''Bidding Entity Qualifications'' at the beginning of your comments.]

The vendor would be responsible for completing and meeting all criteria on both the Vendor Application Form and the Provider/Supplier Enrollment Application (Form CMS 855B) (for this purpose, vendors will be considered suppliers) by the established deadlines in order to be considered as a potential vendor under the CAP. For example, if a vendor has been excluded from participation in a Federal health program, or has been convicted of a fraud-related crime, the vendor must record that on the form 855B. CMS would treat these admissions from vendors in the same manner as it does for other suppliers. Both the Vendor Application Form and the Provider/Supplier Enrollment Application (Form CMS 855B) would be available on the CMS Web site at the following address: *http://www.cms.hhs.gov/providers/drugs/*). Both forms are needed to cover all required vendor qualifications. However, the forms cannot be completed online. They must be printed, completed and mailed to CMS.

We would require that the vendor be prepared to offer complete information in four major areas and also to complete a certification statement. The vendor's business experience would be required to be within the United States. Also required on the Vendor Application Form would be a complete list of drugs that the vendor would intend to bid by National Drug Code (NDC) number.

Management and Operations

We propose to require that the vendor attest that adequate administrative arrangements are in place to ensure effective operations, such as but not limited to, policies that assure that business is conducted in the best interest of the customer, maintenance of fidelity bonds, and insurance policies to cover losses. General identifying information would also be required such as business name, address, taxpayer identification number, contacts representing the organization, and a description of the organization's structure. In addition, each subcontractor, subsidiary, or business affiliate that is used by the vendor under the CAP would be required to provide the same information.

Experience and Capabilities

The vendor would be required to maintain the operation of a grievance process so that physician, beneficiary, and beneficiary caregiver complaints can be addressed. We expect vendors to provide a prompt response to any inquiry as outlined in the vendor application form. We would require that vendors maintain business hours on weekdays and weekends with staff available to provide customer assistance for the disabled, including the hearing impaired, and to Spanish speaking inquirers. Vendors would also be required to provide toll free emergency assistance when the call center is closed. Customer service is a primary consideration, especially the ability to respond on an emergency basis to physicians. In addition, we would require that a working telephone customer service number be submitted and will be verified during the bid evaluation process.

Section 1847B (b)(2)(A)(i)(II) of the Act gives some guidance regarding timeframes for routine and emergency shipment, however, the statute does not provide specific definitions of these timeframes. Therefore, we are seeking public comment on how to define timely delivery for routine and emergency drug shipments. For the purposes of this discussion, we propose that the delivery time period would begin when a drug order is received by the vendor and would end at the time of delivery to the physician's office or other intended setting. We propose that routine shipments of drugs furnished under the CAP would occur within a one to two business day time period. However, the duration of the delivery time period must not exceed the drug's stability in appropriate shipping containers and packaging. We seek comments on the feasibility of requiring a shorter duration for routine delivery of CAP drugs. We also propose that emergency drug orders be furnished on the next day for orders received by the vendor before 3 p.m. (vendor's local time), however, we seek comments on the feasibility of providing same-day deliveries for orders received for emergency situations.

We propose to require that vendors maintain a formal mechanism for responding to complaints from physicians, beneficiaries, and their caregivers (if applicable). We propose that evidence of this mechanism, in the form of any complaint resolution manuals, agendas, and minutes from complaint resolution committee meetings, or other evidence would be submitted as part of the bid application.

In addition to providing an audited financial statement as an attachment, we propose that the vendor be required to present a standardized summary of financial information on the collection form. We would require the vendor to have been in the business of furnishing Part B injectable drugs for at least 3 years. We seek comment on this standard, especially on whether the requirement of 3 tax reporting years of experience would prevent newer vendors with sufficient experience and resources from being included in the program. The vendor would be prepared to offer and substantiate the drug volume managed (dollars and units) for the immediate previous calendar year. Also, the vendor would be asked to provide specific personnel statistics such as the number of staff assigned to various activities, and its policy-making organizational structure within the United States, including a discussion of the membership of this body and to whom it reports.

Finally, by virtue of the fact that selected vendors would be enrolled Medicare suppliers, a vendor would be a health care provider and would be a covered entity under the HIPAA

Administrative Simplification Rules, to the extent that it conducts any of the standard HIPAA transactions electronically. As a covered entity, vendors would be required to comply with the Administrative Simplification rules, including the Privacy Rule.

Licensure

The vendor would be required to maintain an appropriate license in each State in which the drug vendor seeks to operate under the CAP. We would also require that the vendor certify that any subcontractor or subsidiary also maintains a license that complies with State regulations in every applicable State.

Business Integrity

The vendor is responsible for identifying and disclosing business relationships and conflicts of interest as well as potential conflicts of interest with other organizations. Also, the vendor is required to answer questions and provide information about fraud investigations, settlement agreements, and Federal government exclusions.

Certification

We propose that the vendor be prepared to certify that all the information in the Vendor Application Form is true, accurate, and complete and to certify to any other requirements as specified by CMS. Failure to provide correct and updated information when it becomes available, if it affects the information provided on the Vendor Application Form may be cause for termination of the vendor's contract under the CAP.

b. Specific Information Relating to Prevention of Fraud and Abuse.

[If you choose to comment on issues in this section, please include the caption ''Contracting Process-Quality and Product Integrity Aspects'' at the beginning of your comments.]

Section 1847B(b)(4)(D)(ii) of the Act requires that the drug vendor comply with all applicable provisions relating to the prevention of fraud and abuse. This includes compliance with applicable guidelines of the Department of Justice (DOJ) and the Inspector General of the Department of Health and Human Services (OIG). In accordance with this statutory authority, we propose that each CAP vendor develop and maintain a compliance plan to control program fraud, waste, and abuse, that includes at a minimum, the requirements proposed at § 414.914(c) of our regulations. These requirements already apply to many of the entities participating in the Medicare program, such as prescription drug plans administering the prescription drug benefit and Medicare Advantage organizations. In addition, the OIG has recommended these minimum elements in published guidance.

A compliance plan should contain policies and procedures that control program fraud, waste and abuse. In developing written policies, procedures, and standards of conduct for detecting and preventing waste, fraud and abuse, CAP vendors should consult a variety of sources including applicable statutes and regulations and compliance guidance issued by CMS, its contractors, Program Safeguard Contractors (PSCs), and the OIG. Publications that may provide relevant information include the OIG's Program Compliance Guidance for Pharmaceutical Manufacturers, (68 FR 23731) and OIG's voluntary Provider Self-Disclosure Protocol, (63 FR 58399). We propose that CAP vendors also consider industry best practices in developing their compliance plans.

We propose that vendors establish effective training and education programs related to waste, fraud, and abuse that address pertinent laws related to fraud and abuse including the Anti-Kickback law and the False Claims Act. In addition, we propose that CAP vendors and contracted entities be trained on detecting and preventing common fraudulent schemes in the pharmaceutical industry, as identified by CMS, the OIG, and/or the DOJ. Some examples of common fraudulent or abusive problems within the pharmaceutical industry include—

Lack of integrity of data used to establish payment amounts;

Kickbacks and other illegal remuneration; and

Lack of compliance with laws regulating drug samples.

To ensure successful internal monitoring and auditing of waste, fraud, and abuse under Part B, we propose that CAP vendors should regularly monitor and audit their processes and procedures to assure that they are in fact taking the steps necessary to comply with all Federal and State regulations and to mitigate the potential for waste, fraud, and abuse within their organizations. Industry best practices related to fraud, waste, and abuse detection include the use of proactive data analysis and or other analytical processes to detect and address potential fraud. Establishing procedures to ensure prompt responses to potential fraud violations is an important element in an effective fraud and abuse plan. CAP vendors would be responsible for monitoring and identifying potentially fraudulent or abusive activity. For assistance in identifying what constitutes abusive or fraudulent activity, CAP vendors may consult a variety of sources including media reports, DOJ litigation history, OIG published guidance and CMS policy manuals. After a CAP vendor has determined that any misconduct has violated or may violate criminal, civil or administrative law, the CAP drug vendor should report the existence of the misconduct to OIG or other appropriate government authority within a reasonable period, but no later than 60 days after the determination that a violation may have occurred. Self-reporting of fraud and abuse is a critical element to an effective compliance plan, and CAP vendors are strongly encouraged to alert CMS, the PSCs, the OIG, or law enforcement of any potential fraud or misconduct relating to the CAP. We investigate all cases referred as potentially fraudulent and then refer them to the appropriate law enforcement agency as warranted. Likewise, we expect that the CAP vendors fully cooperate in any investigation that we or our law enforcement partners pursue related to fraud identified in a particular drug vendor's organization.

We are aware that there are many possible approaches to developing an effective compliance plan to implement a successful waste, fraud, and abuse program. Therefore, we are seeking comments on the scope and implementation of an effective compliance plan.

c. Conflicts of Interest. Section 1847B(b)(4)(D)(i)of the Act requires that drug vendors participating in the CAP comply with a code of conduct, specified or recognized by the Secretary. The statute authorizes CMS to establish codes of conduct related to conflicts of interest in bidding and performance for drug vendors.

A code of conduct should function much like a constitution, that is, it should be a document that details the fundamental principals, values, and framework for action within an organization. We propose that the code of conduct for CAP vendors articulate the vendor's expectations of commitment to compliance by management, employees, and agents, and summarize the broad ethical and legal principles under which the company must operate.

Avoiding conflicts of interest or the appearance of such conflicts is critical to the operations of CAP. In accordance with our statutory authority under the Act, we propose to require that each CAP vendor establish and follow a code of conduct that addresses their policies

and procedures for identifying and resolving any conflict of interest. A conflict of interest may occur where a drug vendor, its representative, or contractor provides a product or service for a Medicare provider or beneficiary and the drug vendor, representative or contractor has a relationship with another person, entity, product or service that impairs or appears to impair the drug vendor's or contractor's objectivity to provide the Medicare covered product or service. Situations that compromise or appear to compromise a drug vendor's ability to avoid self-dealing when providing a Medicare product or service create a conflict of interest and must be resolved. Drug vendors should take steps to identify and mitigate any conflict of interest that may arise in the provision of a product or service for a Medicare provider or beneficiary.

We propose that the code of conduct communicates the need for all management, board of directors, employees, and agents to comply with the CAP vendor's code of conduct and policies and procedures for addressing and resolving conflicts of interest. We propose that the code of conduct reflects the CAP vendor's commitment to detect and resolve any conflict of interest. We propose further that the code of conduct establish procedures for determining whether or not a conflict exists, and if so, how the conflict will be resolved. We propose that the code of conduct address issues such as whether or not the offer or acceptance of some remuneration to or from a vendor, physician, beneficiary, or manufacturer would diminish, or appear to diminish, the objectivity of professional judgment; or whether or not certain transactions raise patient safety or quality of care concerns.

In addition, throughout the solicitation of CAP contracts, we propose that drug vendors comply with the requirements of the FAR organizational conflict of interest guidance, found under 48 CFR Subpart 9.5, and the requirements and standards contained in each individual contract awarded to perform functions under section 1847B of the Act. Consistent with FAR 9.507–2, in making awards to drug vendors, we propose that each contract contain a conflict of interest clause specific to the CAP vendor for inclusion in the contract.

We are proposing fairly general conflict of interest requirements because we believe that individual contracts may be a better venue to address specific conflicts of interest. However, we solicit and welcome comments regarding what may or may not constitute a conflict of interest in the CAP program and how such conflicts might be identified and mitigated.

We propose to set forth our conflict of interest policies and procedures in regulations at proposed § 414.912.

3. CAP Bidding Process—Evaluation and Selection

a. Evaluating Bid Prices by the Composite Bid Price.

[If you choose to comment on issues in this section, please include the caption ''Cap Bidding Process-Evaluation and Selection'' at the beginning of your comments.]

In selecting vendors, the statute requires consideration of both price and non-price (for example, quality of service and financial qualifications) aspects of the bid. Once we have adopted technical and financial criteria for selecting CAP vendors, and bids have been submitted, the bids must be evaluated to determine which bidders will be awarded contracts to furnish drugs under the CAP. In the final rule, our ultimate choice of an appropriate evaluation process will take into account the final policies concerning the drug categories that will be bid, the geographic areas chosen for the program, and comments on our proposed evaluation process. In this proposed rule, we are proposing a basic approach to the evaluation and bidding selection process. We encourage comments on this proposal, and recommendations for alternative approaches. In the discussion of our proposal for the bidding process as set forth in § 414.910, and the various other options that we have identified, we assume that we are conducting competitive bidding for some number of distinct drug categories. We also assume that bidders with relatively large (including national) distribution networks might also want to submit bids for multiple acquisition areas (depending upon the area definitions that we adopt in the final rule). These bidders will be permitted to submit the same bid price for all areas in which they wish to compete, or to submit completely separate bid prices for each acquisition area. The procedure for evaluating the price component of bids (and setting payment rates) would be the same regardless of the exact method for defining categories of HCPCS drugs that is adopted in the final rule. Section 1847B(c)(6) of the Act requires that the submitted bid price include all costs related to the delivery of the drug to the selecting physician, and the costs of dispensing (including shipping) of the drug and management fees. Costs related to the administration of the drug or wastage, spillage, or spoilage may not be included in the submitted bid. We proposed to specify these requirements at proposed § 414.910 of the bidding process.

The purpose of requiring vendors to bid for all drugs in a category would be to determine a set of vendors that can supply the range of drugs in that category at an appropriate overall cost. Because bidders have different expectations of the discounts they can negotiate for drugs, one vendor may be able to bid a lower price for one drug, but may expect a lesser discount on another. We have therefore sought to identify a selection process that, in the aggregate, can provide drugs at reasonable cost to the program while maintaining the required quality standards.

We are therefore proposing to employ a ''composite bid,'' constructed from the bid prices for the individual drugs in the CAP category, in the process of selected bidders for the CAP. The composite bid would be constructed by weighing each HCPCS bid by the HCPCS code's share of volume (measured in HCPCS units) of drugs in a particular drug category during the prior year. Within each CAP category, the drug weights would sum to one. Based on data availability, the volume data used for bids in the first CAP bidding cycle (for supplying drugs starting January 1, 2006) would be from 2004 since bidding is anticipated to occur in mid-2005. (At this time, we have not developed a method to weight drugs introduced during and after 2004, but invite public comment on methods for consideration.) The calculated composite bid would be equal to the average price per HCPCS unit for drugs in that category. In this way, the composite bid will be proportional to the expected cost to the program of acquiring drugs from that vendor (assuming the 2004 volume in each HCPCS category is roughly proportional to volume in 2006). If one vendor has a lower composite bid than another, it will also have a lower expected cost of supplying all drugs in the particular CAP category.

To illustrate how the composite bid would be calculated, we are providing the following example. Suppose that there are four drugs in a particular CAP drug category (Drug A, Drug B, Drug C, and Drug D). The first column of Table 2 below provides the total volume (HCPCS units) of these drugs administered in 2004 for this hypothetical drug category.

TABLE 2.—EXAMPLE DRUG VOLUMES AND RELATIVE VOLUMES, 2004

Drug	Total HCPCS units	Relative volume
Drug A	1,452,472	0.3520
Drug B	988,586	0.2395
Drug C	1,671,567	0.4050
Drug D	14,302	0.0035
Total	4,126,927	1.0000

Three drugs (Drugs A, B, and C) have volumes (total HCPCS units) much greater than that of the fourth (Drug D). The second column of Table 2 gives the relative volumes, computed by dividing the volumes of the individual components of this CAP category by the total volume of HCPCS units for drugs in this category. These relative volumes are the weights used to construct the composite bids.

The computation of the composite bids for these four bidders is shown in Table 3. The composite bid for Bidder 1 is computed as the weighted sum of the bids for the four drugs: ($520 × 0.3520) + ($400 × 0.2395) + ($135 × 0.4050) + ($4,780 × 0.0035), which is equal to $350.25. The composite bids for the other three bidders are computed similarly.

TABLE 3.—EXAMPLE COMPOSITE BID COMPUTATION

Drug	Weight	Bidder 1	Bidder 2	Bidder 3	Bidder 4	Low bidder
Drug A	0.3520	$520	$530	$550	$530	1
Drug B	0.2395	400	410	380	390	3
Drug C	0.4050	135	105	135	120	2
Drug D	0.0035	4,780	4,830	4,430	4,800	3
Composite Bid	.....	350.25	344.19	354.79	345.37	2

As Table 3 illustrates, it is possible for a bidder to be the low bidder on more individual drugs than other bidders (Bidder 3, the low bidder for Drug B and Drug D), but have the highest composite bid. This is due to Bidder 3's relatively high bid for Drug A and Drug C, which have the largest volumes (in HCPCS units). Also note that although Bidder 4 is not the low bidder for any of the four drugs, its composite bid is the second lowest.

As we have noted above, the statute requires consideration of price and non-price (for example, quality of service and financial qualifications) aspects of the bid. In order to implement this requirement, we propose a two-step bidder selection:

- First, certain quality and financial thresholds must be met by all bidders.
- Then, winning bidders would be selected from those that meet the quality and financial thresholds on the basis of a method for evaluating the composite bids.

We have considered several basic methods for evaluating the composite bids. From these alternatives, we have decided to propose a method that bases the selection of winning bidders on a predetermined threshold. Specifically, under the method we are proposing, we would select, from all those bidders that meet the quality and financial thresholds, up to the five lowest bidders for a drug category in each area. However, we would not select any bid for the category that is higher than 106 percent of the weighted ASP for the drugs in that category. We believe that limiting the maximum bid price that we would accept is consistent with Congressional intent that the CAP promote savings.

As an example of this computation, suppose that the ASPs for four drugs in the composite bid example above (see Table 2) are as follows: $516 for Drug A, $376 for Drug B, $111 for Drug C, and $4,831 for Drug D. Using the relative weights in Table 2, we would compute the composite bid threshold as 1.06 × ($516 × 0.3520 + $376 × 0.2395 + $111 × 0.4050 + $4,831 × 0.0035), which is equal to $353.56. In this example, three bidders (Bidder 1, 2 and 4) would be selected as CAP vendors. (*See* Table 4.)

TABLE 4.—EXAMPLE: PROPOSED COMPOSITE BID SELECTION METHOD

Drug	Weight	Bidder 1	Bidder 2	Bidder 3	Bidder 4	Bids selected
Drug A	0.3520	$520	$530	$550	$530	.....
Drug B	0.2395	400	410	380	390	.....
Durg C	0.4050	135	105	135	120	.....
Drug D	0.0035	4,780	4,830	4,430	4,800	.....
Composite bid	.....	350.25	344.19	354.79	345.37	.....
Maximum bid	.....	353.56	353.56	353.56	353.56	1, 2, 4

We are proposing this method for selecting bids for several reasons. This method is straightforward and relatively easy to implement. In addition, accepting no bid prices that exceed the payment level under the new ASP payment methodology is consistent with one major purpose of the new competitive acquisition system, since it creates the possibility of realizing savings to the Medicare program. We believe that this method is preferable to other options. For example, one alternative to the method that we are proposing is simply to accept any composite bid for a drug category that is less than 106 percent of the weighted ASP for the drugs in that category. Under this method, it would be possible for every bidder to submit a bid price just below ASP plus 6 percent, in the confidence that the bid would be accepted. This method would thus limit the potential for savings to the program, compared to the bidding process that we are proposing. Under the process that we are proposing, bidders retain an

incentive to submit the best bid price that is possible for them. Thus, restricting the number of bidders that might be accepted provides for more competition in the bidding process than accepting all bidders under a designated threshold. In this proposed rule, we are therefore proposing to accept up to five composite bids, for a category of drugs, but we do not propose to accept any bid that exceeds a composite bid threshold of 106 percent of ASP. We would compute the composite bids, and the 106 percent composite bid threshold, in the manner described in the examples above. We welcome comments on this proposal, and recommendations for alternative approaches. In the final rule, after we have considered the comments, we may adopt some variation of this proposal, or some alternative recommended by the commenters.

b. Determining the Single Price for a Category of Drugs. Once the winning bidders have been identified, section 1847B(d)(1) of the Act requires that a single price must be determined for each drug in a competitive acquisition area, ''based on bids submitted and accepted.'' We have considered a number of options for determining this single price on the basis of the accepted bid prices. In this proposed rule at § 414.906(c)(1), (which describes the computation of the payment amount), we are proposing to establish a single price, for each drug in a competitive acquisition area, based on the median bid of the winning bidders. As a simple example of how this method might work, consider the bids for one drug submitted by the winning bidders under our proposed composite bid selection method (see Table 4). For Drug D, Bidder 1 submitted a bid of $4,780, Bidder 2 submitted a bid of $4,830, and Bidder 4 submitted a bid of $4,800. The median of these three bids is $4,800. Under this version of our proposed method, then, the single price for this drug would be $4,800.

We are proposing to employ the median bid for several reasons. First, this method is straightforward and relatively easy to implement. In addition, this method could realize some savings to the Medicare program. Unless all accepted bids are at the level of the maximum allowable bid (106 percent of ASP), this method for determining the single price would yield savings to the program. Finally, using the median of the acceptable bids is an obvious statistical method to determine a single price on the basis of using the information provided by these bids, as required by the statute.

In cases where there are four winning bidders for a drug category in an area, we will employ the average of the two bid prices in the middle of the array for a particular drug in that category in order to set the single prices for that drug. Specifically, if four bidders are selected, we would employ the average of the bids of the second and third highest bidders on each drug to set the price for the drug. If only two bidders are selected, we would use the average of the two bids for the drug to set the price for that drug. The qualified vendors would be made aware of the established price set for the CAP drugs before he or she signs the contract to be an approved vendor.

We invite comments on this proposal and also invite commenters to recommend alternative approaches. After analyzing the comments, we may adopt some variation of this proposal, or some alternative recommended by the commenters, in the final rule.

Section 1847B(d)(2) of the Act requires the Secretary to ''establish rules regarding the use * * * of the alternative payment amount provided under section 1847A of the Act'' for payment of a new drug or biological under the CAP. Section 1847A of the Act establishes the average sales price methodology for most drugs paid under Part B of the Medicare program. Section 1847A(c)(4) of the Act further provides alternatives for the Secretary to determine the amount payable for new drugs during an initial period. In accordance with the requirement at section 1847B(d)(2) of the Act, we are proposing to apply the payment amount that we establish under section 1847A of the Act in the case of any drug or biological for which we determine that—(1) The drug or biological is properly assigned to a category established under the CAP; and (2) issuance of a new HCPCS code is required for the drug or biological. We would employ the payment amount determined in accordance with the methodology provided under section 1847A(c)(4) of the Act until the next annual update of the single price amounts that we are proposing below.

Section 1847B(b)(4)(B) of the Act provides that contracts for the acquisition of competitively biddable drugs under the CAP must be for a period of 3 years. Therefore, it is necessary to determine some mechanism for setting the single price for each category of drugs in the second and third years of this 3-year contract. We are proposing to employ the mechanism provided under section 1847B(b)(7) of the Act for this purpose. That section provides for drug price adjustments on the basis of cost information provided by vendors to the Secretary. Specifically, that section provides that each contract must provide for disclosure to the Secretary of the vendor's ''reasonable, net acquisition costs'' on a regular basis (not more often than quarterly). It further requires that contracts must provide for ''appropriate price adjustments over the period of the contract to reflect significant increases or decreases in a vendor's reasonable, net acquisition costs, as so disclosed.'' We are therefore proposing at § 414.906(c)(1) to update the CAP prices for each drug in a category in year 2 and year 3 based on the vendor's ''reasonable, net acquisition costs'' for that category as determined by CMS based, in part, on information disclosed to the Secretary and limited by the weighted payment amount established under 1847A of the Act across all drugs in that category.

Section 1847B(c)(7) of the Act gives the Secretary the discretion to establish an appropriate schedule for the CAP vendor's disclosure of this cost information to us, provided that disclosure is not required more frequently than quarterly. There are obviously a number of possible disclosure schedules. We are proposing to require that each vendor disclose to the Secretary its reasonable, net acquisition costs for the drugs covered under the contract annually during the period of its contract. Annual disclosure imposes the minimal burden on vendors consistent with employing this provision to determine the single price for drugs in the second and third years of a contract. More frequent disclosure (for example, quarterly) is, of course, also consistent with this purpose. We anticipate that the annual disclosure will be required in or around October of each year, to provide sufficient time to determine what, if any, update in drug prices would be appropriate for the following year. We invite comments regarding an appropriate disclosure schedule under section 1847B(b)(7) of the Act for this purpose.

There are also a number of methods that we could adopt to develop an appropriate adjustment on the basis of the net reasonable cost information disclosed by vendors.

We are proposing the following methodology. We would employ the net reasonable cost information disclosed by each vendor to determine whether the vendor has experienced significant increases or decreases in the reasonable, net acquisition costs across a category of drugs. For this purpose, we may establish a threshold percentage change (for example, 5 percent) in these costs, to determine whether the changes warrant computing an adjustment to the

single prices for the drugs in that category. If the change in the costs reported by a particular vendor meet this threshold, we would use a two-step process to recompute the single price for each drug in that class. First, we would adjust the bid price that the vendor originally submitted by the percentage change indicated in the information that the vendor disclosed. To return to the example discussed earlier, Bidder 1 submitted a bid of $4,780, Bidder 2 submitted a bid of $4,830, and Bidder 4 submitted a bid of $4,800 for Drug D. The price for the drug in the first year of the contract is therefore the median of these three bids, or $4,800. Suppose that Bidder 1 submits information prior to the second year of the contract indicating that the reasonable, net acquisition costs for the drugs in a category have increased by 7 percent. At the same time, Bidder 4 submits information indicating that costs have increased by 10 percent. We would adjust each of the original bid prices for the drug accordingly. The bid price of Bidder 1 would increase from $4,780 to $5,115 ($4,780 × 1.07). Similarly, the bid price of Bidder 4 would increase from $4,800 to $5,280 ($4,800 × 1.10). Next, we would recompute the single price for the drug as the median of these adjusted bid prices. Specifically, the new single price for the drug would be $5,115, the median of $5,115, $4,830, and $5,280.

It is important to note that this mechanism would apply in the case of any significant change in reasonable, net acquisition costs, whether those changes reflect increase or decreases in costs. It is therefore possible that the single price for a drug could decrease in the second or third year of a contract where, for example, acquisition costs for the drug have decreased because of the introduction of a generic equivalent.

We would consider ''reasonable, net acquisition costs'' to be those costs actually incurred by the vendor that are necessary and proper for acquiring the drugs that the vendor is obligated to provide under a CAP contract. Actual acquisition costs are net of all discounts and rebates provided by the vendor's own suppliers. We would require full disclosure of the vendor's acquisition costs for drugs included in the CAP contract. We propose that this disclosure would reflect the vendor's purchases of these drugs from all manufacturers, and the total number of units purchased from each manufacturer. The vendor would be required to submit full documentation reflecting these purchases, including contracts, invoices, and other agreements that reflect the actual purchase prices. This documentation would include all records reflecting discounts that result in a reduction of actual cost to the vendor. These discounts would include volume discounts, prompt pay discounts, cash discounts, free goods that are contingent on any purchase requirement, chargebacks, rebates, refunds, and other price concessions.

We also propose to make more frequent adjustments (but not more often than quarterly) in three cases: introduction of a new drug, expiration of a drug patent, or a material shortage that results in a significant price increase for a drug. We may restrict the circumstances in which we would make adjustments to account for shortages to those in which the Secretary has declared a public health emergency under section 319 of the Public Health Service Act. We invite comments on this approach.

We also welcome comments on every aspect of this discussion, especially on the frequency with which we would collect the requisite data and the precise manner in which we would calculate the changes in single drug prices.

4. Contract Requirements

[If you choose to comment on issues in this section, please include the caption ''Contract Requirements'' at the beginning of your comments.]

Sections 1847B(b)(4) of the Act discusses items to be incorporated in the contract entered into with a CAP vendor. These include the following:

—The length of the contract.

—Assurance of the integrity of the drug distribution system.

—A pledge to comply with code of conduct and fraud and abuse rules.

—Assurance that drugs are only supplied directly to CAP physicians upon receipt of a prescription and other necessary data.

We propose to set forth the contract terms between CMS and the approved vendor as well as vendor responsibilities in proposed § 414.914.

5. Judicial Review

[If you choose to comment on issues in this section, please include the caption ''Judicial Review'' at the beginning of your comments.]

Provisions of 1847(B)(g) of the Act concerning administrative and judicial review are set forth in regulations at proposed § 414.920. This section of the Act specifies aspects of the CAP that are not subject to administrative or judicial review.

D. Implementation of the CAP

1. Physician Election Process

[If you choose to comment on issues in this section, please include the caption ''Physician Election Process'' at the beginning of your comments.]

Section 1847B(a)(1)(A) of the Act specifies that each physician is given the opportunity annually to elect to participate in the CAP. Payment for a charge for any drug or biological may be made only on an assignment-related basis in accordance with section 1842(o)(3)(A) of the Act. Physicians who do not elect to participate in the CAP would continue to buy the drugs they provide to beneficiaries incident to a physician's service and bill the Medicare program for them under section 1847A of the Act, the ASP methodology.

Section 1847B(a)(5)(A) of the Act requires that we develop a process that physicians who wish to participate in the CAP may use on an annual basis to select the vendor from whom they wish to obtain drugs and the categories of drugs they wish to obtain under the CAP program. The statute also requires that we coordinate the physician's election to participate in the CAP with the Medicare Participating Physician Process described in section 1842(h) of the Act. To inform physicians about the choices of drugs and vendors available to them under the CAP, we are required to post a directory on the CMS Web site or to make such a directory available to interested physicians on an ongoing basis.

We propose that physicians who elect to participate in the CAP would remain in the program for at least 1 calendar year. As described in more detail later in this section, physicians who elect to participate in the CAP would be required to complete a CAP election agreement. We propose that by completing this CAP election agreement, the physician would select the approved vendor that he or she would use under the CAP and would agree to the CAP participating physician requirements. Under these requirements, the physician would agree to—

- Share information with the vendor to facilitate the collection of applicable deductible and coinsurance.
- Promptly file claims.
- Timely and appropriately pursue claims that are denied because of medical necessity issues.
- Notify the vendor when a drug is not administered.
- Maintain an inventory for each CAP drug he or she obtains.

Participating CAP physicians would also agree to comply with emergency drug replacement rules and requirements for using the ''furnish as written'' provision. If we find it necessary, we may revoke the physician's election to participate in the CAP if the physician fails to abide by the CAP election agreement.

We propose to initiate an annual CAP physician election process. We have modeled our proposed CAP physician election process after the Medicare Participating Physician Process to the extent possible. In addition, we communicated information to physicians about the upcoming CAP through the fact sheet that accompanied the 2005 Participating Physician Mailing, and plan to continue to use that vehicle to communicate information about CAP to physicians in future years. However, we note that the annual Physician Participation election process runs from November 14 to December 31 of each year. Waiting until December 31 to receive information about physicians' CAP election choices would not provide sufficient time for us and our claims processing contractors to record information about CAP physicians and their drug category selections, update claims processing files, perform testing, and inform vendors so that we are ready to pay CAP claims on January 1, 2006. In addition, a deadline of December 31 would not allow sufficient time for vendors to meet the operational timeframe of January 1. Therefore, we propose that the CAP physician election process would run from October 1 to November 15 of each calendar year. We propose that physicians who intend to continue into subsequent years may signal that preference by executing an abbreviated CAP election agreement. The abbreviated agreement may be used to indicate a preference to change vendors or drug categories from year to year. We propose that a CAP participating physician may select a vendor outside the annual election process if the previously selected vendor ceases participation in CAP, or if the physician leaves the group practice that had selected the given vendor or relocates to another competitive area. We propose to specify the exceptions to the annual selection process at proposed § 414.908(a)(2) of our regulations.

We seek comment on the potential options available to affected physicians when a vendor leaves the program during the middle of the CAP year. Proposed physician options would include leaving the CAP or switching vendors as is required by the proposed CAP election agreement for the physician to participate in the CAP. We propose that, consistent with the Medicare Participating Physician Process, if members of a group practice elect to participate in the CAP, the entire practice would participate. Group practices enroll as a group, and are assigned a group PIN number to bill Medicare. Physician groups that elect to participate in the CAP would be paid for drug administration based on the group PIN number that they place on their claim. We propose that when a physician bills as a member of a group using the group PIN, he or she must follow the group's election to participate or not to participate in the CAP. However, we also propose that if the physician in the group practice also has a solo practice, he or she may make a different determination to participate or not to participate in the CAP when using his or her individual PIN.

We also propose that consistent with the Medicare Participating Physician Process, new physicians would be given 90 days in which to decide to elect to participate in the CAP. They would receive information about CAP when they enroll as a Medicare provider and would be instructed how to find the election information and forms on the CMS Web site. If they elect to participate, they would download the forms and submit them to their Medicare carrier.

We propose to implement the following process:

(1) We would prepare a posting on our Web site by October 1, describing the vendors we have selected to participate in the CAP, the categories of drugs they would be providing, and the geographic areas within which each vendor would operate.

(2) We would publicize the availability of the CAP physician election information on our Web site via our physician listservs, and our Medicare fee for service contractors' Web sites and newsletters. We would also coordinate with physician specialty organizations to enlist their assistance in informing their members that the physician election information is available.

(3) Physicians would be asked to access the CAP election agreement on our Web site and determine whether they would like to elect to participate in the program.

(4) Physicians who elect to participate would be asked to download, complete and sign the CAP election agreement. The CAP election agreement would require that they select the vendor(s) in their area from which they would like to obtain drugs and the categories of drugs they wish to obtain through the program.

(5) Physicians would be instructed to return completed CAP election agreement to their local carrier. The CAP election agreement must be postmarked by November 15.

(6) The local carrier would make note of the physician's decision to participate in the CAP, and the vendor(s) and categories of drugs selected.

(7) The local carrier would forward information from the CAP election agreement to the CAP designated carrier.

(8) The designated carrier would compile a master list of all Medicare physician's vendor and drug selections. In addition, the designated carrier would notify each CAP vendor of the physician who has elected to enroll with that vendor.

(9) After the necessary claims processing files are prepared, the local carrier and the designated carrier would begin system testing to be ready to pay claims by January 1, 2006.

As we become more experienced with the CAP program, we plan to evaluate these timeframes to determine if adjustments should be made to the dates for the CAP election process. The requirements concerning a physician's election to participate in the CAP are set forth in regulations at proposed § 414.908(a).

2. Vendor or Physician Education

[If you choose to comment on issues in this section, please include the caption ''Vendor or Physician Education'' at the beginning of your comments.]

To ensure that vendors and physicians have timely access to accurate Medicare program information regarding the CAP, we would instruct the CAP designated carrier to utilize various communication channels at the local and national levels to disseminate information about the CAP and assist vendors and physicians in understanding the Medicare program's operations, policy, and billing and administration procedures regarding the CAP. The CAP designated carrier would be instructed to utilize data analyses in tailoring its outreach and educational efforts for vendors and physicians regarding identified areas of confusion about the CAP. Additionally, the CAP designated carrier would be instructed to utilize mass media, as well as educational and outreach products, services, forums, and partnerships in an effort to disseminate information about, and provide assistance regarding, the CAP to the vendor and healthcare practitioner communities. The

fundamental goal of the CMS provider outreach and education requirements of the CAP designated carrier would be to ensure that those who provide service(s) to beneficiaries receive the information they need to understand the Medicare program so that it is administered appropriately and billed correctly. As such, we would be involved in oversight of, and partnership with, the CAP designated carrier's vendor and physician outreach and educational program regarding the CAP.

3. Beneficiary Education

[If you choose to comment on issues in this section, please include the caption ''Beneficiary Education'' at the beginning of your comments.]

The CAP would have an impact on beneficiaries who receive physician administered drugs. If a physician elects to participate in the CAP, beneficiaries receiving services from this physician would receive a separate MSN from the designated carrier that processes invoices for the drug vendor as well as a bill from the drug vendor for the copayment of the drug. This may cause confusion for the beneficiary because he or she would only know that the drugs were administered by a physician. In addition, because the activity of the drug vendor would be transparent to the beneficiaries, they may question why they are receiving a bill from an unknown entity.

To educate beneficiaries in a proactive fashion, we propose to develop a beneficiary-focused fact sheet, and to update existing related educational materials, to reflect these changes. The fact sheet would be available for physicians who elect to participate in the CAP to provide to beneficiaries at the time of service. It would explain the CAP and its impact on the beneficiary. We would also make this fact sheet available at 1–800–MEDICARE, as well as on the www.medicare.gov website. Although we are not proposing to require physicians to provide beneficiaries with the fact sheet, we seek comment on the administrative burden associated with this activity. In addition, while we are not proposing to require any additional options for specific outreach, we are also interested in obtaining comments on other mechanisms that might be utilized to inform the beneficiary of services provided as part of the CAP (such as a notice constructed to allow the physician to specifically identify the drugs administered and the CAP vendor which could be handed out to beneficiaries at the end of a physician encounter) and the burden that would be associated with this mechanism.

We also propose to provide information about CAP in the 2006 versions of the Medicare & You handbook and Your Medicare Benefits. The handbook is mailed annually to each beneficiary household. Your Medicare Benefits is available upon request at 1–800–MEDICARE, as well as on the *http://www.medicare.gov* Web site. Information would also be provided to the 1–800–MEDICARE helpline so that operators can answer CAP related questions. The *http://www.medicare.gov* Web site would also have consumer-friendly information available about CAP.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements:

Section 414.906 Competitive Acquisition Program as the Basis for Payment

A physician who elects to participate in the program and has selected an approved vendor, must provide information to the approved vendor to facilitate collection of applicable deductible and coinsurance as described in § 414.906(a)(3).

The burden associated with this requirement is the time and effort necessary for the physician to provide the information to the vendor to facilitate collection of applicable deductible and coinsurance. CMS is requesting public comment on the extent of burden associated with this requirement. In the final rule CMS will quantify the amount of burden associated with this requirement based upon public input.

Section 414.908 Competitive Acquisition Program

A physician is provided an application process for the selection of an approved vendor on an annual basis. The CAP election agreement will facilitate physician enrollment and designation of their approved CAP vendor and agreement to abide by the CAP program requirements.

The burden associated with this requirement is the time and effort necessary for the physician to enroll and designate an approved CAP vendor. We estimate that it will require 70,000 physicians 15 minutes each to fulfill the application requirements.

In addition, physicians participating in the CAP must elect to use an approved vendor for the drug category area as discussed in § 414.904(a)(1); submit a written order or prescription to the approved vendor; not receive payment for the competitively biddable drug except as described in § 414.906(c)(2)(ii); provide information to the approved vendor to facilitate collection of applicable deductible and coinsurance as described in § 414.906(a)(3); notify the approved vendor when a drug is not administered; maintain a separate electronic or paper inventory for each CAP drug obtained; agree to file the Medicare claim when the drug is administered.

The burden associated with this requirement is the time and effort necessary for the physician to provide and/or maintain the information required as discussed above. CMS is requesting public comment on the extent of burden associated with this requirement. In the final rule CMS will quantify the amount of burden associated with this requirement based upon public input.

Section 414.910 Bidding Process

Vendors may bid to furnish competitively biddable drugs in all areas of the United States, or a specific region that meets the requirements of this section.

The burden associated with these requirements is the time and effort necessary to submit the bid application, supporting documentation, and maintain necessary documentation demonstrating that the requirements set forth in the contract have been or will be met.

We estimate that it will require 25 bid applicants 40 hours each to meet the bidding and contract requirements.

Section 414.914 Terms of Contract

The terms of the contract between CMS and the approved vendor will be for a term of 3 years. During the contract period the vendor must disclosure to CMS or its agent, the approved vendor's reasonable, net acquisition costs for a specified period of time, on at least an annual basis.

The burden associated with these requirements is the time and effort necessary for the vendor to submit to CMS or its agent, the vendor's reasonable, net acquisition costs for a specified period of time, at least on an annual basis.

We estimate that it will require each of the 10 vendors 8 hours on an annual basis to submit the necessary information, for total annual burden of 8 hours per vendor.

Section 414.916 Dispute Resolution

Cases of an approved vendor's dissatisfaction with denied drug claims are resolved through a voluntary alternative dispute resolution process.

Since the requirements set forth in this section are in accordance with administrative action, audit, or investigation, the requirements of this section are exempt from the PRA as stipulated under 5 CFR 1320.4 (a)(2).

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, Attn: John Burke, CMS–1325–P, Room C5–13–28, 7500 Security Boulevard, Baltimore, MD 21244–1850; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Christopher Martin, CMS Desk Officer, CMS–1325–P, Christopher *Martin@omb.eop.gov*. Fax (202) 395–6974.

IV. Response to Public Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the ''DATES'' section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Analysis

[If you choose to comment on issues in this section, please include the caption ''Regulatory Impact Analysis'' at the beginning of your comments.]

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which reassigns responsibility of duties) 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 effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for final rules with economically significant effects (that is, a final rule that would have an annual effect on the economy of $100 million or more in any 1 year, or would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities).

Since this rule is considered to be a major rule because it is economically significant, we have prepared a regulatory impact analysis. The RFA requires that we analyze regulatory options for small businesses and other entities. We prepare a Regulatory Flexibility Analysis unless we certify that a rule would not have a significant economic impact on a substantial number of small entities. The analysis must include a justification concerning the reason action is being taken, the kinds and number of small entities the rule affects, and an explanation of any meaningful options that achieve the objectives with less significant adverse economic impact on the small entities.

For purposes of the RFA, physicians and non-physician practitioners are considered small businesses if they generate revenues of $8.5 million or less. Approximately 96 percent of physicians are considered to be small entities. There are in excess of 20,000 physicians and other practitioners that receive Medicare payment for drugs. These physicians are more concentrated in the specialties of oncology, urology, and rheumatology. Of the physicians in these specialties, approximately 40 percent are in oncology and 45 percent in urology.

The impact of this proposed rule on an individual physician is dependent on the drugs they provide to Medicare beneficiaries and whether these drugs are included in the categories of drugs considered for competitive acquisition and whether the physician chooses to obtain drugs administered to Medicare beneficiaries through the CAP.

In addition, this proposed rule would have an impact on entities, either existing or formed specifically for this purpose, that are involved in the dispensing of drugs. This impact would be dependent on the categories of drugs and geographic areas that are determined to fall under the CAP and on their ability to successfully compete and receive approval as a vendor under the competitive acquisition program.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this proposed rule will have no significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million.

We have examined this proposed rule in accordance with Executive Order 13132 and have determined that this regulation would have no consequential effect on the rights, roles, or responsibilities of State, local, or tribal governments.

A. Anticipated Effects

We have prepared the following analysis, related to the assessment requirements. It explains the rationale for, and purposes of, the rule, details the costs and benefits of the rule, analyzes alternatives, and presents the measures we are using to minimize the burden on small entities. As indicated elsewhere, we are making changes to method of payment for drugs in response to the requirements of section 1847B of the Act. We provide information on the options being considered in the development of the CAP in the relevant sections in this rule. The provisions of this rule discuss changes to our payment for drugs through the establishment of a competitive

acquisition process as an alternative payment system for Part B drugs and biologicals. This rule does not impose reporting, record keeping, and other compliance requirements except as described in sections II.C.3 and II.D.1 of the preamble. We are unaware of any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The effect of this proposed rule on an individual physician would be dependent on the drugs they provide to Medicare beneficiaries and whether these drugs are included in the categories of drugs considered for competitive acquisition. For example, a physician may—(1) Determine the cost associated with acquiring drugs through the competitive acquisition program, (2) determine the cost associated with acquiring drugs through traditional means and billing Medicare under the ASP plus six percent methodology, and (3) determine if there is a cost savings associated with either program. Different outcomes may result from these calculations depending on the drug mix, overhead cost, and patient mix.

A physician who elects to participate in the program would obtain all of their Medicare related drugs in categories for which CAP is implemented in their area through a competitive acquisition program vendor. The vendor would then collect applicable deductibles and coinsurance from the beneficiary. Under this option, the physician would never take legal ownership of the drug and would eliminate the cost associated with collecting deductibles and coinsurance. Because the drug remains the property of the vendor until the time of administration, the physician can also reduce the cost associated with storage and individual drug supplier negotiations. The CAP may also save physicians money since they would not be in the drug purchasing and procurement business and would not have to collect coinsurance from beneficiaries.

This rule also proposes establishing rules whereby drugs and biologicals administered by the physician in emergency situations that were not originally acquired through a Medicare vendor may be resupplied through the Medicare competitive acquisition program vendor.

B. Impact of Establishment of a Competitive Acquisition Program

We have simulated the impact of the costs of furnishing or administering drugs through the competitive acquisition program and found it to be negligible. At this time we anticipate no additional cost savings or increases associated with the competitive acquisition program, particularly relative to the ASP + 6 percentages since the specific parameters under which the CAP will be operating (for example, specific drugs, physicians electing to participate in CAP) will be directed by this rulemaking and are not yet determined. Moreover, some of the key purposes of the CAP program are to provide alternatives to physicians who do not wish to be in the drug purchasing and coinsurance collection business.

C. Alternatives Considered

This proposed rule contains alternative approaches to implementing a competitive acquisition program for Part B drugs that we considered, each of which has been discussed in detail. We will select one of these approaches after reviewing all public comments received on the proposed rule and making any necessary modifications.

D. Impact on Beneficiaries

We have simulated the effect of changes in beneficiary coinsurance for drugs and related changes in beneficiary Part B premium payments resulting from the implementation of competitive acquisition program for Part B drugs. We have concluded that there will be no appreciable difference to the beneficiaries if their drugs were to be administered by a physician participating in the CAP or purchasing them at ASP plus 6 percent, thus there would be no cost or savings to the beneficiary whose physician participates in the CAP.

We do not believe that any beneficiaries would experience drug access issues as a result of implementation of CAP. We intend to monitor beneficiary access closely and may propose additional changes to our payment system in the future if necessary.

We propose to develop educational material to distribute to beneficiaries, such as pamphlets and a discussion in The Medicare Handbook, to help explain the CAP and the changes they will see on their Medicare summary notices. Specifically, under the CAP beneficiaries would now pay their coinsurance and deductibles to their CAP vendor instead of the administering physician.

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget has reviewed this regulation.

List of Subjects in 42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in this preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr(b)(1)).

Subpart K—Payment for Drugs and Biologicals Under Part B

2. Revise the heading of subpart K as set forth above.

3. Amend § 414.900 by—

A. Revising the section heading.

B. Revising paragraph (a).

C. Revising paragraph (b)(3)(ii).

The revisions read as follows:

§ 414.900 Basis and scope.

(a) This subpart implements sections 1842(o), 1847A, and 1847B of the Act and outlines the two payment methodologies applicable to drugs and biologicals covered under Medicare Part B that are not paid on a cost or prospective payment system basis.

(b) * * *

(3) * * *

(ii) Pneumococcal and Hepatitis B vaccines.

* * * * *

4. Republish the introductory text to § 414.902 and add the definitions of ''Approved vendor,'' ''Bid,'' ''CAP election agreement,'' ''Competitive acquisition program,'' ''Competitive area,'' ''Competitively biddable drugs,'' ''Designated carrier,'' ''Local carrier,'' and ''Participating CAP physician'' to read as follows:

§ 414.902 Definitions.

As used in this subpart, unless the context indicates otherwise—

Approved vendor means an entity that has been awarded a contract by CMS to participate in the competitive acquisition program.

Bid means an offer to furnish a competitively biddable drug within a category of competitively biddable drugs in a competitive area for a particular price and time period.

Competitive acquisition program (CAP) means a program as defined under section 1847B of the Act.

CAP election agreement means the form that the physician must complete to notify CMS that he or she elects to participate in the CAP.

Competitive area means the geographic area established by the Secretary for purposes of implementing the CAP required by section 1847B of the Act.

Competitively biddable drugs means a physician-administered drug or biological furnished on or after January 1, 2006 described in section 1842(o)(1)(C) of the Act.

Designated carrier means an entity assigned by CMS to process and pay claims for drugs and biologicals under the Part B drug competitive acquisition program.

* * * * *

Local carrier means an entity assigned by CMS to process and pay claims for administration of drugs and biologicals under the Part B drug competitive acquisition program.

* * * * *

Participating CAP physician means a Medicare physician electing to participate in the CAP described in this subpart. The participating CAP physician must complete and sign the CAP election agreement.

* * * * *

5. Amend § 414.904 by revising the section heading to read as follows

§ 414.904 Average sales price as the basis of payment.

* * * * *

6. Add § 414.906 to read as follows:

§ 414.906 Competitive acquisition program as the basis for payment.

(a) *Program payment.* Beginning in 2006, as an alternative to payment under § 414.904, payment for a drug may be made through competitive acquisition if the following occurs:

(1) The competitively biddable drug is supplied under the program by an approved vendor as specified in § 414.908(b).

(2) The claim for the prescribed drug is submitted by the approved vendor that supplied the drug and payment is only made to that vendor.

(3) The approved vendor collects applicable deductible and coinsurance with respect to the drug furnished under the CAP only after the drug is administered to the individual.

(4) The approved vendor delivers the drugs directly to the participating CAP physician.

(b) *Exceptions to competitive acquisition.* Specific competitively biddable drugs, including a category of these drugs, may be excluded from the CAP if the application of competitive bidding to these drugs—

(1) Is not likely to result in significant savings; or

(2) Is likely to have an adverse impact on access to such drugs.

(c) *Computation of payment amount.* (1) Except as specified in paragraph (c)(2) of this section, payment for competitively biddable drugs is based on bids submitted and accepted as described in § 414.910. Based on these bids, a single payment amount for each competitively biddable drug in the competitive area is determined. This payment is updated on an annual basis based on the approved vendor's reasonable net acquisition costs for that category as determined by CMS based, in part, on information disclosed to CMS and limited by the weighted payment amount established under section 1847A of the Act across all drugs in that category. Adjustment to the payment amounts may be made more often than annually, but no more often than quarterly, in any of the following cases:

(i) Introduction of new drugs.

(ii) Expiration of a drug patent.

(iii) Material shortage that results in a significant price increase for the drug.

(2) The alternative payment amount established under section 1847A of the Act may be used to establish payment for a competitively biddable drug—

(i) For which a payment and BILLING CODE has not been established; or

(ii) When medical necessity requires a certain brand of drug that the approved vendor has not been contracted to furnish under the CAP.

(d) *Adjustments.* There is an established process for adjustments to payments to account for drugs that were billed at the time of dispensing but which were not administered.

(e) *Resupply of participating CAP physician drug inventory.* A participating CAP physician may acquire drugs under the CAP to resupply his or her inventory if all of the following requirements are met:

(1) The drugs were required immediately.

(2) The participating CAP physician could not have anticipated the need for the drugs.

(3) The vendor could not have delivered the drugs in a timely manner.

(4) The participating CAP physician administered the drugs in an emergency situation.

7. Add § 414.908 to read as follows:

§ 414.908 Competitive acquisition program.

(a) *Physician selection of an approved vendor.* (1) CMS provides the physician with a process for the selection of an approved vendor on an annual basis, with exceptions as specified in § 414.908(a)(2), and will also receive information about the CAP in the enrollment process for Medicare participation discussed in section 1842(h) of the Act.

(2) A physician may select an approved vendor outside the annual selection process when—

(i) The approved vendor ceases participation in the CAP; or

(ii) Other exigent circumstances defined by the Secretary, for example the participating CAP physician relocates to another competitive area or the physician leaves a group practice participating in the CAP.

(3) The physician participating in the CAP—

(i) Elects to use an approved vendor for the drug category area as set forth in § 414.904(a)(1);

(ii) Completes and signs the CAP election agreement;

(iii) Submits a written order or prescription to the approved vendor;

(iv) Does not receive payment for the competitively biddable drug except as described in § 414.906(c)(2)(ii);

(v) Provides information to the approved vendor to facilitate collection of applicable deductible and coinsurance as described in § 414.906(a)(3);

(vi) Notifies the approved vendor when a drug is not administered;

(vii) Maintains a separate electronic or paper inventory for each CAP drug obtained;

(viii) Agrees to file the Medicare claim within 14 days of the date of drug administration; and

(ix) Agrees to submit an appeal accompanied by all required documentation (such as medical records or a certification) necessary to support payment if the participating CAP physician's drug administration claim is denied.

(4) *Physician group practices.* If a physician group practice using a group billing number elects to participate in the CAP, all physicians in the group are considered to be participating CAP physicians when using the group number.

(b) *Program requirements.* (1) CMS selects approved vendors through a competition among entities based on the following:

(i) Submitting the bid prices for competitively biddable drugs within the category and competitive area that—

(A) Place the vendor among the lowest five qualified bidders; and

(B) Do not exceed the weighted payment amount established under section 1847A of the Act across all drugs in that category.

(ii) Ability to ensure product integrity.

(iii) Customer service.

(iv) At least 3 years experience in furnishing Part B injectable drugs.

(v) Financial performance and solvency.

(vi) Record of integrity and the implementation of internal integrity measures.

(vii) Internal financial controls.

(viii) Acquisition of all drugs and biological products directly from the manufacturer or from a distributor that has acquired the products directly from the manufacturer.

(ix) Other factors as determined by the Secretary.

(2) Approved vendors must also meet the contract requirements under § 414.914.

(c) *Additional considerations.* CMS may refuse to award a contract or terminate an approved vendor contract based upon the following:

(1) Suspension or revocation by the Federal or State government of the entity's license for distribution of drugs, including controlled substances.

(2) Exclusion of the entity under section 1128 of the Act from participation in Medicare or other Federal health care programs.

(d) *Multiple source drugs.* In the case of multiple source drugs, there must be a competition among entities for the acquisition of at least one competitively biddable drug with each billing and payment code within each category for each competitive area.

(e) *Multiple contracts for a category.* The number of bidding qualified entities that are awarded a contract for a given category and area may be limited to no fewer than two.

8. Add § 414.910 to read as follows:

§ 414.910 Bidding process.

(a) Entities may bid to furnish competitively biddable drugs in all competitive areas of the United States, or a specific competitive area.

(b) There will be uniformity among the bids for any specific competitive area.

(c) A submitted bid price must include the following:

(1) All costs related to the delivery of the drug to the participating CAP physician.

(2) The costs of dispensing (including shipping) of the drug and management fees. The costs related to the administration of the drug or wastage, spillage or spoilage may not be included.

9. Add § 414.912 to read as follows:

§ 414.912 Conflicts of interest.

(a) Approved vendors and applicants that bid to participate in the CAP are subject to the following:

(1) The conflict of interest standards and requirements of the Federal Acquisition Regulation (FAR) organizational conflict of interest guidance, found under 48 CFR subpart 9.5.

(2) Those requirements and standards contained in each individual contract awarded to perform functions under section 1847B of the Act.

(b) *Post-award conflicts of interest.* Approved vendors must have a code of conduct that establishes policies and procedures for recognizing and resolving conflicts of interest between the approved vendor and any entity, including the Federal Government, with whom it does business. The code of conduct must—

(1) State the need for management, employees, and agents to comply with the approved vendor's code of conduct, and policies and procedures for conflicts of interest; and

(2) State the approved vendor's expectations of commitment to compliance by management, employees, and agents.

10. Add § 414.914 to read as follows:

§ 414.914 Terms of contract.

(a) The terms of the contract between CMS and the approved vendor will be for a term of 3 years. The contract may be terminated—

(1) By CMS for default if the approved vendor violates any term of the contract; or

(2) In the absence of a contract violation, by either CMS or the approved vendor, if the terminating party notifies the other party by June 30 for an effective date of termination of December 31 of that year.

(b) The contract will provide for a code of conduct for the approved vendor that includes standards relating to conflicts of interest standards at § 414.912.

(c) The vendor will have a compliance plan that contains policies and procedures that control program fraud, waste, and abuse, and consists of the following minimum elements:

(1) Written policies, procedures, and standards of conduct articulating the organization's commitment to comply with all applicable Federal and State standards.

(2) The designation of a compliance officer and compliance committee accountable to senior management.

(3) Effective training and education between the compliance officer and organization employees, contractors, agents, and directors.

(4) Enforcement of standards through well publicized disciplinary guidelines.

(5) Procedures for effective internal monitoring and auditing.

(6) Procedures for ensuring prompt responses to detected offenses and development of corrective action initiatives relating to the organization's contract as a drug vendor.

(i) If the drug vendor discovers evidence of misconduct related to payment or delivery of drugs or biologicals under the contract, it will conduct a timely and reasonable inquiry into that conduct.

(ii) The drug vendor will conduct appropriate corrective actions including, but not limited to, repayment of overpayments and disciplinary actions against responsible individuals, in response to potential violations referenced at paragraph (c)(6)(i) of this section.

(7) Procedures to voluntarily self-report potential fraud or misconduct related to the CAP to the appropriate government agency.

(d) The contract must provide for disclosure of the approved vendor's reasonable, net acquisition costs for a specified period of time, not to exceed quarterly.

(e) The contract must provide for appropriate adjustments as described in § 414.906(c)(1).

(f) Under the terms of the contract, the approved vendor must also—

(1) Have sufficient arrangements to acquire and deliver competitively biddable drugs within the category in the competitive area specified by the contract;

(2) Have arrangements in effect for shipment at least 5 days each week of competitively biddable drugs under the contract, including emergency situations, and for timely delivery of such drugs in the competitive area;

(3) Have procedures in place to address and resolve complaints of participating CAP physicians and individuals and inquiries regarding shipment of competitively biddable drugs;

(4) Have a grievance and appeals process for dispute resolution;

(5) Meet applicable licensure requirements in each State in which it distributes drugs under the CAP;

(6) Enroll in Medicare as a participating provider; and

(7) Comply with all necessary provisions related to the prevention of fraud and abuse.

11. Add § 414.916 to read as follows:

§ 414.916 Dispute resolution.

(a) *General rule.* Cases of an approved vendor's dissatisfaction with denied drug claims are resolved through a voluntary alternative dispute resolution process delivered by the designated carrier, and a reconsideration process provided by CMS.

(b) *Dispute resolution.* (1) When an approved vendor is not paid on claims submitted to the designated carrier, the vendor may appeal to the designated carrier to counsel the responsible participating CAP physician on his or her agreement to file a clean claim and pursue an administrative appeal in accordance with subpart H of part 405 of this chapter. If problems persist, the vendor may ask the designated carrier to—

(i) Review the participating CAP physician's performance; and

(ii) Potentially recommend a suspension of the participating CAP physician's CAP election agreement.

(2) *Responsibility of the designated carrier.* The designated carrier—

(i) Investigates and makes a recommendation to CMS on whether the participating CAP physician has been meeting the claims and appeals obligations in his or her CAP election agreement;

(ii) Gathers information from the local carrier and the approved vendor; and

(iii) Makes a recommendation to CMS on whether the participating CAP physician has been filing his or her CAP drug administration claims in accordance with the requirements for physician participation in the CAP as set forth in § 414.908(a)(3).

(3) CMS reviews the recommendation of the designated carrier and, if necessary, gathers additional information before deciding whether to suspend the participating CAP physician's CAP election agreement for a period not to exceed the end of the following CAP election cycle. This suspension is limited to the participating CAP physician's ability to order drugs from the specific vendor.

(4) The participating CAP physician may appeal that exclusion by requesting a reconsideration. A determination must be made as to whether the participating CAP physician's denied claims and appeals were the result of the participating CAP physician's failure to participate in accordance with the requirements of § 414.908(a)(3).

(c) *Reconsideration.* (1) *Right to reconsideration.* A participating CAP physician dissatisfied with a determination that his or her CAP election agreement has been suspended by CMS is entitled to a reconsideration as provided in this subpart.

(2) *Eligibility for reconsideration.* CMS reconsiders any determination to suspend a participating CAP physician's election agreement if the participating CAP physician files a written request for reconsideration in accordance with paragraphs (c)(3) and (c)(4) of this section.

(3) *Manner and timing of request for reconsideration.* A participating CAP physician who is dissatisfied with a CMS decision to suspend his or her CAP election agreement may request a reconsideration of the decision by filing a request with CMS. The request must be filed within 30 days of receipt of the CMS decision letter. From the date of receipt of the decision letter until the day the reconsideration determination is final. The ASP payment methodology under section 1847A of the Act applies.

(4) *Content of request.* The request for reconsideration must specify—

(i) The findings or issues with which the participating CAP physician disagrees;

(ii) The reasons for the disagreement;

(iii) A recital of the facts and law supporting the participating CAP physician's position;

(iv) Any supporting documentation; and

(v) Any supporting statements from vendors, local carriers, or beneficiaries.

(5) *Withdrawal of request for reconsideration.* A participating CAP physician may withdraw his or her request for reconsideration at any time before the issuance of a reconsideration determination.

(6) *Discretionary informal hearing.* In response to a request for reconsideration, CMS may, at its discretion, provide the participating CAP physician the opportunity for an informal hearing that—

(i) Is conducted by a hearing officer appointed by the director of the CMS Center for Medicare Management or his or her designee; and

(ii) Provides the participating CAP physician the opportunity to present, by telephone or in person, evidence to rebut CMS' decision to suspend or terminate a participating CAP physician's CAP election agreement.

(7) *Informal hearing procedures.* (i) CMS provides written notice of the time and place of the informal hearing at least 10 days before the scheduled date.

(ii) The informal reconsideration hearing will be conducted in accordance with the following procedures:

(A) The hearing is open to CMS and the participating CAP physician requesting the reconsideration, including—

(*1*) Authorized representatives;

(*2*) Technical advisors (individuals with knowledge of the facts of the case or presenting interpretation of the facts);

(*3*) Representatives from the local carrier;

(*4*) Representatives from the approved vendor; and

(*5*) Legal counsel.

(B) The hearing is conducted by the hearing officer who receives relevant testimony;

(C) Testimony and other evidence may be accepted by the hearing officer even though it would be inadmissible under the rules of evidence applied in Federal courts;

(D) Either party may call witnesses from among those individuals specified in the paragraph (c)(7)(ii)(A) of this section; and

(E) The hearing officer does not have the authority to compel by subpoena the production of witnesses, papers, or other evidence.

(8) *Hearing officer's findings.* (i) Within 30 days of the hearing officer's receipt of the hearing request, the hearing officer presents the findings and recommendations to the participating CAP physician who requested the reconsideration. If the hearing officer conducts a hearing in person or by phone, the findings and recommendations are due to the participating CAP physician within 30 days from of the hearing's conclusion.

(ii) The written report of the hearing officer includes separate numbered findings of fact and the legal conclusions of the hearing officer.

(9) *Final reconsideration determination.* (i) The hearing officer's decision is final unless the director of the CMS Centers for Medicare Management or his or her designee chooses to review that decision within 30 days.

(ii) The CMS official may accept, reject, or modify the hearing officer's findings.

(iii) If the CMS official reviews the hearing officer's decision, the CMS official issues a final reconsideration determination to the participating CAP physician on the basis of the hearing officer's findings and recommendations and other relevant information.

(iv) The reconsideration determination of the CMS official is final.

(v) CMS publishes a final reconsideration determination against a participating CAP physician in the **Federal Register.**

(d) The approved vendor treats quality and service issues through its grievance process. If the approved vendor does not resolve a quality issue to the participating CAP physician's satisfaction, the participating CAP physician may escalate the matter to the designated carrier. The designated carrier attempts to develop solutions that satisfy program requirements and the needs of both the participating CAP physician and the approved vendor.

(e) The approved vendor may not charge the beneficiary for the full drug coinsurance amount if the designated contractor did not pay the approved vendor in full. When a beneficiary receives a coinsurance bill under these circumstances, the beneficiary may participate in the approved vendor's grievance process to request correction of the approved vendor's file. If the beneficiary is dissatisfied with the result of the approved vendor's grievance process, the beneficiary may request intervention from the designated carrier. This is in addition to, rather than is place of, any other beneficiary appeal rights. The designated carrier will first investigate the facts and then facilitate correction to the appropriate claim record and beneficiary file.

12. Add § 414.918 to read as follows:

§ 414.918 Assignment.

Payment for a charge for a competitively biddable drug for which payment is made may be made only on an assignment-related basis.

13. Add § 414.920 to read as follows:

§ 414.920 Judicial review.

The following areas under the CAP are not subject to administrative or judicial review:

(a) The establishment of payment amounts.

(b) The awarding of vendor contracts.

(c) The establishment of competitive acquisition areas.

(d) The selection of competitively biddable drugs

(e) The bidding structure.

(f) The number of vendors selected.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 10, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: February 24, 2005.

Michael O. Leavitt,

Secretary.

[FR Doc. 05–3992 Filed 2–25–05; 4:00 pm]

BILLING CODE 4120–01–P

Federal Register

Friday,
March 4, 2005

Part III

Environmental Protection Agency

40 CFR Parts 260, 261, et al.

Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 263, 264, 265, and 271

[FRL–7867–4]

RIN 2050–AE21

Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is establishing new requirements revising the Uniform Hazardous Waste Manifest regulations and the manifest and continuation sheet forms used to track hazardous waste from a generator's site to the site of its disposition. The revisions announced today will standardize the content and appearance of the manifest form and continuation sheet (Forms 8700–22 and 22a), make the forms available from a greater number of sources and adopt new procedures for tracking certain types of waste shipments with the manifest. The latter types of shipments include hazardous wastes that destination facilities reject, wastes consisting of residues from non-empty hazardous waste containers, and wastes entering or leaving the United States.

DATES: This final rule is effective September 6, 2005.

ADDRESSES: EPA has established a docket for this action under Docket ID No. RCRA–2001–0032. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center (EPA/DC), EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: For further information regarding specific aspects of this notice, contact Bryan Groce, Office of Solid Waste, (703) 308–8750, *groce.bryan@epa.gov,* or Richard LaShier, Office of Solid Waste, (703) 308–8796, *lashier.rich@epa.gov*. Mail inquiries may be directed to the Office of Solid Waste, (5304W), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Rule Apply to Me?

This rule affects up to 139,000 entities in at least 45 industries (see table below) involved in shipping approximately 12 million tons of RCRA hazardous wastes annually (non-wastewaters and wastewaters), using between 2.4 and 5.1 million EPA Uniform Hazardous Waste Manifests (EPA Form 8700–22 and continuation sheets EPA Form 8700–22A). These entities include but are not limited to: Hazardous waste generators; transporters; treatment, storage and disposal facilities (TSDFs); federal facilities; state governments; and governmental enforcement personnel dealing with hazardous waste transportation issues. If you have any questions regarding the applicability of this rule to a particular entity, consult the people listed under **FOR FURTHER INFORMATION CONTACT.**

LIST OF INDUSTRIES POTENTIALLY AFFECTED BY REVISIONS TO THE RCRA MANIFEST FORM AND CONTINUATION SHEET

[EPA form 8700–22 & 22a]

Item	SIC	NAICS	Industry or sub-sector identity	Item	SIC	NAICS	Industry or sub-sector identity
1	1794	23593	Construction excavation work	24	4512	48111	Air transportation.
2	20	311	Food and kindred products manufacturing.	25	4613	48691	Refined petroleum pipelines.
3	2295	31332	Coated fabrics manufacturing	26	4789	488999	Transportation services n.e.c.
4	24	321	Lumber and wood products manufacturing.	27	4813	5133	Telephone communications.
5	25	337	Furniture and fixtures manufacturing.	28	49	2211	Electric, gas & sanitary services.
6	26	322	Pulp and allied products manufacturing.	29	4953	562211	Hazardous waste treatment & disposal.
7	27	511	Printing and publishing	30	4959	562910	Hazardous waste remediation services.
8	28	325	Chemicals and allied products mfg.	31	50	421	Wholesale trade (durable goods).
9	29	324	Petroleum and coal products mfg.	32	51	422	Wholesale trade (nondurable goods).
10	30	326	Rubber & misc plastic products mfg.	33	5912	44 to 45	Drugstores & proprietary retail stores.
11	32	327	Stone, clay and glass products mfg.	34	6552	23311	Real estate sub-dividers & developers.
12	33	331	Primary metal manufacturing industries.	35	7216	81232	Dry cleaning plants.
13	34	332	Fabricated metal products manufacturing.	36	73	541	Business services.
14	35	333	Industrial machinery & equipment mfg.	37	7532	811121	Top, body & upholstery repair & paint shops.
15	36	335	Electronic & other electric equipment mfg.	38	7699	561	Repair shops & related services n.e.c.
16	37	336	Transportation equipment manufacturing.	39	8062	62211	General medical & surgical hospitals.

LIST OF INDUSTRIES POTENTIALLY AFFECTED BY REVISIONS TO THE RCRA MANIFEST FORM AND CONTINUATION SHEET—Continued

[EPA form 8700–22 & 22a]

Item	SIC	NAICS	Industry or sub-sector identity	Item	SIC	NAICS	Industry or sub-sector identity
17	38	334	Instruments & related products mfg.	40	8221	61131	Colleges & universities.
18	39	339	Miscellaneous manufacturing industries.	41	87	541	Engineering & management services.
19	4111	485	Local and suburban passenger transit.	42	8999	541	Services n.e.c.
20	4173	48849	Terminal service facilities for vehicle transport.	43	95	924 to 925	Environmental quality & housing administration.
21	42	484	Trucking and warehousing	44	9661	92711	Space research & technology.
22	4212	562112	Hazardous waste collection services.	45	9711	92811	National security (*e.g.* military bases).
23	4491	4883	Marine cargo handling..				

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket number RCRA–2001–0032. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except legal holidays. The telephone number for the Reading Room is (202) 566–1742 and the telephone number for the EPA Docket Center is (202) 566–0270.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/.* This Federal Register also may be accessed from EPA's main manifest web page at *http://www.epa.gov/epaoswer/hazwaste/gener/manifest/index.htm.* An electronic version of the public docket is available through EPA's electronic public docket and comment, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select ''search,'' then key in the appropriate docket identification number.

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I. Background

On May 22, 2001, EPA published a notice of proposed rulemaking (NPRM) to revise the hazardous waste manifest system (66 FR 28240). The revisions, proposed in May 2001, aimed to reduce the manifest system's paperwork burden on users, while enhancing the effectiveness of the manifest as a tool to track hazardous waste shipments that are shipped from the site of generation to treatment, storage, or disposal facilities (TSDFs). The proposed rule would have accomplished this by adopting a standardized manifest form with fewer or no optional data fields, by adopting a new approach for distributing and acquiring the form, by standardizing further the data elements and procedures for tracking certain types of hazardous waste shipments, and by allowing the manifest to be completed, signed, transmitted and stored electronically. Thus, the proposed rule consisted of manifest system reforms of two distinct types: (1) Revisions to the manifest form itself and the procedures for using the form (hereafter, ''form revisions''); and (2) revisions aimed at replacing the paper-based manifest system with a nearly paperless, electronic approach to tracking hazardous waste shipments (hereafter, ''e-manifest'').

EPA received 64 sets of public comments in response to the May 22, 2001 proposed rule notice from hazardous waste generators, transporters, waste management firms, consultants, an information technology vendor and ten state hazardous waste agencies. Commenters generally supported our goals of further standardizing the manifest form elements and reducing variability among the manifests that authorized RCRA state agencies currently distribute. However, the commenters had differing views on many of the particulars of the proposed revisions to the manifest. Moreover, there were a substantial number of comments that took issue with EPA's proposed approach to the e-manifest, particularly with respect to the technical rigor of the proposal, the assumptions relied upon by EPA in its projections of burden and cost reductions, the feasibility of the proposed electronic signature options, the highly detailed security requirements aimed at preventing fraud and data corruption, the reliance on regulated industry to develop private e-manifest systems, and the NPRM's suggestion that state programs may not be required to adopt the e-manifest requirements within their authorized RCRA state programs.

We believe that the comments addressing the e-manifest proposal raised significant substantive issues that merit further analysis and stakeholder outreach prior to adopting a final approach. The comments received in response to the form revisions proposal, on the other hand, raised fewer difficult issues that would deter us from going forward at this time with a final rule. Therefore, EPA has decided to separate the e-manifest from the form revisions portion of the final rulemaking. Today's notice announces our final rule approach only with respect to the manifest form revisions. Final action on the e-manifest will be based on the results of continuing analysis and outreach on several key rulemaking issues that are fundamental to the ultimate decision regarding whether EPA will adopt the e-manifest.

The key e-manifest issues that must be resolved include: (1) Whether the e-manifest should be decentralized as proposed and hosted by multiple private systems, centrally by EPA or by another party; (2) if a decentralized approach were to be adopted, how EPA's standards should address interoperability of private systems; (3) whether the final e-manifest approach should be integrated with biennial reporting or other functions supported by EPA, the states or other agencies; (4) what electronic signature methods should be included in the final rule; and, (5) the technical rigor and detail necessary in EPA's final standards to ensure a workable approach to the e-manifest.

While today's rule finalizes action only on the manifest form revisions, the e-manifest remains a high priority for the Agency. EPA conducted a stakeholder outreach meeting dedicated to the e-manifest during May 19–20, 2004 in Washington, DC. We learned from these focused stakeholder discussions that there is strong support for the e-manifest among the various private and public sector interests involved with waste generation and management, as well as among the State agencies that collect manifest data and oversee compliance with the manifest system. In particular, we learned that there is strong support among stakeholders for a consistent, national e-manifest system, although there are varying views on whether a national system should be privately or publicly hosted and funded, or, developed as a joint public/private venture. Significantly, the user community indicated at the May 2004 stakeholder meeting that it is willing to help fund the establishment and operation of an e-manifest system through the payment of reasonable user or transactional fees for e-manifest services. Given the strong interest expressed by stakeholders in a national e-manifest system, EPA is now exploring if there is a feasible means for EPA or another party to develop and implement a national e-manifest system, as well as exploring in more detail the design and performance requirements of any such system. The Agency expects to announce its decision on the future direction of the e-manifest by the end of Fiscal Year 2005.

In Section II of this preamble, we discuss the elements of the final form revisions rule, including a summary of our May 2001 proposal, the significant comments raised in response to the proposal, our final rule determinations, and the rationale for those determinations. On balance, the final form revisions resemble the proposed rule's contents very closely. We adopted relatively minor changes in response to public comments. For example, we accepted the great number of comments urging EPA *not* to retain any manifest data fields as ''optional'' fields. Thus, today's final rule introduces changes from the proposal to the RCRA waste code fields and to the handling code fields, since these elements will be mandatory fields to be completed on all manifests.

With respect to the Generator Identification field on the form, we accepted the comments asking us to expand this field to include the generator's site address, if different from

the mailing address already required on the form. We are also finalizing the proposed changes to the manifest form acquisition requirements, and providing more guidance and information on the particulars of the Registry process by which EPA will authorize entities adhering to the new federal printing specification to print and distribute manifests.

In addition, with respect to the proposed rejected waste and residue fields and procedures, we accepted the numerous comments asking EPA to allow users to mark up the original manifest in some instances when they forward rejected waste shipments to alternate facilities or return shipments to generators, rather than always require treatment, storage, and disposal facilities (TSDFs) to initiate a new manifest. We also adjusted the rejected waste proposal to explain that the TSDFs that initiate new manifests for purposes of forwarding rejected waste or residue shipments bear the limited liability of an ''offeror'' with respect to the forwarded wastes, and not the more extensive liabilities of RCRA generators. We discuss these and other changes from the proposed rule in the following section.

II. Detailed Discussion of the Final Rule

A. *Standardization of the Hazardous Waste Manifest.* As we explained in the May 22, 2001 proposed rule (see 66 FR 28240 at 28243), the adoption of the Uniform Manifest in 1984 did not entirely eliminate the problems with lack of consistency and uniformity that have existed since the inception of the manifest program. Many problems arise from states' varying use of available optional fields, users' different understandings about what information to enter in the current data fields, and different copy distribution systems and submission requirements among authorized state programs. All of these differences have forced waste handlers to expend considerable effort and incur significant paperwork burden in order to comply with the varying state manifest requirements. We received many strongly positive comments endorsing our proposal to further standardize the manifest format and procedures, effectively reducing the burden on waste handlers.

Standardization of the manifest form involves three related measures that we included in the proposed rule. First, the proposed rule discussed eliminating or consolidating several of the existing data fields whose waste transportation or data tracking functions were neither essential nor appeared justified by the burden they caused to the manifest system. Second, the proposed rule discussed adding several new fields that EPA, states, or stakeholders believed were necessary to improve the effectiveness of the manifest for tracking waste. Third, the proposed rule addressed eliminating or reducing the number of optional fields for use by the states. The Uniform Manifest adopted in 1984 included eleven such optional fields. The states varying implementation of these optional fields on state-specific formats resulted in generators, transporters and TSDFs having to stock a variety of states' manifest forms and remain cognizant of the differences in states' requirements. We will explain how the final rule addresses each of these three proposed measures.

B.1. *Elimination or Consolidation of Existing Data Elements—Introduction.* In the NPRM, we proposed to remove nine data elements from the Uniform Manifest form. All but one of these nine items appear in what is known as the ''state optional'' or upper right area of the current manifest, rather than being among the items that are designated as mandatory fields. The nine data elements that we proposed to remove or consolidate with other spaces on the manifest were:

VIII. Item A State Manifest Document Number,
IX. Item B State Generator's ID,
X. Item C State Transporter's ID,
XI. Item D Transporter's Phone,
XII. Item E State Transporter's ID,
XIII. Item F Transporter's Phone,
XIV. Item G State Facility's ID,
XV. Item H Facility's Phone, and
XVI. Item J Additional Descriptions for Materials.

In short, the proposed rule would have removed all of the fields currently designated as ''state optional,'' except for current optional Item I, which is reserved for collecting RCRA waste code information, and current Item J, which collects data on handling codes. With regard to Item I, we proposed to retain, enlarge and make mandatory the optional data element for collecting waste codes. Section II.F.6 of this preamble includes a discussion of the final rule's treatment of waste code information. With respect to Item J, we proposed to standardize the information to be entered here around the hazardous waste management method codes entered for hazardous waste reporting purposes.

The proposal to remove the other nine data elements was grounded on several factors: (1) A desire to reduce the time spent completing the manifest; (2) the recognition that several of the nine elements were redundant with each other; (3) the recognition that a few states were using several of the optional fields as tools for ''niche'' data reporting, sometimes in ways that were not contemplated by EPA or DOT in 1984 when we decided to include the optional fields on the manifest; and (4) the recognition that all shareholders prefer that the manifest remain a one-page format that collects the most essential waste shipment information. Thus, the addition of several new tracking fields to the form will of necessity require space to be freed up on the form for this new information, and require us to remove items that appear less essential for tracking waste shipment and management information.

We received several comments endorsing the proposal to eliminate all nine of these ''optional'' fields as a way of reducing burden and variability in the manifest system. These commenters pointed out that the data involved consisted largely of state ID Numbers, facility phone numbers, or other static information that emergency responders or waste handlers could obtain elsewhere. These comments were balanced by other comments suggesting that most of the fields we proposed to remove provided some useful contact information that should be entered on the form for the benefit of emergency responders, state agency personnel, or in some instances, other waste handlers. However, we clearly could not retain all of these data elements and still accommodate any changes to the form that would add or delineate in more detail other waste tracking information that stakeholders urged us to adopt as part of the manifest revision effort, unless we were willing to expand the manifest to a two-page document. Given that the current one-page manifest already entails preparing and filing between four and eight copies, and the concerns that have been raised by users with Continuation Sheets that can be separated and misplaced during transit, we do not believe that a two-page format would be an acceptable outcome. We believe that it is essential to retain the manifest's one-page format, and this choice necessitates that additions to the form be offset with deletions. Thus, in making final decisions on what fields to eliminate, the Agency relied heavily on the numerous comments on this subject, but had to exercise its judgment in determining which data elements were most essential to the transportation and tracking functions of the manifest, which data elements avoided duplication with data collected elsewhere, and which data elements

seemed to provide the most benefit to the greatest number of stakeholders. We explain our final decisions for each of these nine data elements below.

2. *Proposed Removal of State Manifest Tracking Number.* The State Manifest Tracking Number is not necessary, given the new manifest acquisition process discussed in Section III.A.3 of this preamble. When the new manifest form becomes effective, a registered printer will assign each manifest a unique, pre-printed Manifest Tracking Number. Printers can obtain authority to print manifests by registering with EPA under the Registry process and adhering to the federal printing specification for the manifest. There no longer will be separate state versions of the manifest form, and authorized states will no longer control the assignment of State Manifest Numbers to the new form. Thus, the State Manifest Number's role—assuring uniqueness of each manifest and facilitating the tracking of manifests in databases—is subsumed by the new mandatory requirement for Manifest Tracking Numbers to be pre-printed on the forms.

3. *Proposed Removal of State Generator ID Field.* We proposed in the May 2001 NPRM to remove this data element from the revised manifest form, but comments we received have persuaded us to retain a State's ability to require a State Generator ID number in certain instances. Several comments from state agencies pointed out that, in certain instances, states regulate generators as hazardous waste generators under their programs, but the generators do not have EPA ID numbers. For example, cases exist where a facility generates a waste regulated by the state as hazardous (states may have broader-in-scope programs), but is not a hazardous waste under the federal RCRA waste listings or characteristics. Similarly, the state may implement a broader-in-scope program that does not include as many of the federal exemptions from the definition of solid or hazardous wastes, or, the state may not recognize the status of conditionally exempt small quantity generators or other conditionally exempt wastes. In these cases, EPA would not issue such a generator an EPA Generator ID. However, the state would have a legitimate interest in assigning a State Generator ID Number to identify that generator on manifests or other submissions and in the state's databases. We agree with these commenters that there are valid reasons for retaining the State Generator ID field on the manifest and for providing the state authority to require such an ID when no corresponding EPA ID Number is assigned to that generator. Therefore, in this final rule, the manifest form will provide a common field for entering the generator's EPA or State ID Number. In this way, it is not necessary to retain the State Generator ID item as a separate data field. We emphasize that the State Generator ID Number should only be entered in this field when there is no available EPA ID Number for the generator.

4. *Proposed Removal of State Transporter's ID Fields.* Under the existing Uniform Manifest, users record State Transporter's ID numbers in optional Items C and E. We proposed to remove these data elements in the May 2001 proposed rule, primarily because we believed that all hazardous waste transporters would have EPA ID numbers; there was no reason to retain data elements that would collect redundant information. In addition, we proposed to remove these data elements because we understood that states were using the Transporter ID field to collect certain types of information that were not authorized under the 1984 Uniform Manifest Rule that established the optional fields and set restrictions on their use. We intended the Transporter ID number field to record numbers established by EPA or states to identify a transportation company. Over the years, however, some states elected to use this field to collect identifying information on particular vehicles (*e.g.*, registration numbers) or drivers (*e.g.*, training certification numbers). EPA previously has issued guidance or interpretations stating that such uses are inconsistent with the federal program.

Several commenters requested that the State Transporter ID field be retained in this rule. Several state agencies and a waste management facility commenter pointed out that some states, in fact, use this field to check whether waste transporters or their vehicles are properly licensed in the state. EPA does not agree with these commenters that the states' interest in licensing hazardous waste transporters or registering transportation vehicles or drivers is sufficient to warrant retaining the State Transporter ID Number fields on the revised manifest. In fact, these comments only confirm our belief that the use of this field over the years has extended to areas that were not contemplated or allowed when the Uniform Manifest Rule was issued in 1984. The federal regulations do not require states to issue licenses to hazardous waste transporters. There are ways to verify the transporters' state-licensed status other than requiring generators to enter license information or vehicle registration numbers on each hazardous waste manifest. The Transporter ID field's purpose was to identify each transporter company uniquely and indicate its eligibility under RCRA to handle and transport hazardous waste. While states may issue licenses to hazardous waste transporters, we do not believe that the Uniform Manifest should contain state-specific data requirements aimed at enforcing transporter licensing requirements that vary from state to state. We did not receive any comments suggesting that there were state regulated transporters that lacked an EPA ID number. Therefore, this final rule removes the State Transporter ID fields from the manifest form, and affirms that it is sufficient for the purposes of the revised manifest to enter only the transportation company's EPA ID number.

5. *Proposed Removal of Transporter's Phone Fields.* Under the existing form, Items D and F are optional fields where users can record phone numbers for up to two transporters that may be identified in the mandatory transporter fields of the Uniform Manifest. The May 2001 NPRM proposed to remove Items D and F because we believed it was unnecessary to record the transporter phone numbers along with the other mandatory phone numbers. Several commenters asked us to retain the transporter phone fields because of the convenience accorded waste handlers who have grown accustomed to finding this contact information on the form.

EPA does not agree with the commenters that convenience of the parties in this instance provides a sufficiently compelling argument for retaining the transporter phone number fields on the form. We believe that the argument for retaining transporter phone contact information would be compelling if there were information in the comments suggesting that this is vital information for emergency responders. However, the revised form now includes an Emergency Response Phone Number field (explained in Section II.C.3 of this preamble), which is consistent with DOT requirements for hazardous materials shipping papers. We believe that including this new data element—dedicated to Emergency Response purposes—effectuates the manifest's emergency response purpose more effectively than recording each transporter company's phone number on the form. Moreover, the revised manifest still requires phone numbers for the generator and the designated facility, who are directly responsible for reconciling discrepancy and exception events. Waste handlers should not be

greatly inconvenienced if they must at times resort to their internal contact lists rather than the Uniform Manifest to obtain a transporter's current phone number. Therefore, today's final rule removes the transporter phone number data elements from the revised manifest form.

6. *Proposed Removal of State Facility's ID Field.* Item G is an optional field on the existing Uniform Manifest, used to record a State Facility ID number. We proposed to remove this data element in May 2001 based on our belief that it produced duplicate information already provided by the EPA ID Number in Item 10 of the existing form. Designated facilities with EPA ID Numbers already are identified uniquely on the manifest and in RCRA databases (*e.g.*, RCRAInfo). While commenters suggested it was convenient to use these numbers to ensure compliance with state licensing requirements, we did not receive comment that refuted our argument concerning redundancy. While permitted states may issue their own facility identification numbers, it is not necessary to burden waste handlers or the revised, standardized manifest form, with a requirement to enter duplicative facility identifiers. Therefore, this final rule removes the State Facility ID data element from the revised manifest form.

7. *Proposed Removal of Facility's Phone Field.* The existing manifest form designates Item H as an optional data element where users can record the designated facility's phone number. The NPRM proposed to remove this data element from the revised form because we believed that users could obtain this contact information through means other than the manifest. However, we received a substantial number of comments from waste handlers and authorized states urging EPA to retain this data field. We learned from these commenters that generators, transporters and agency personnel use this information to address discrepancies, exceptions or other issues that arise from shipments of waste moving in commerce. Resolving discrepancies and exceptions are important waste tracking functions served by the manifest, and the comments persuaded us that the facility's phone number facilitates the performance of these critical tracking functions. Therefore, the revised manifest form retains space for entering the facility's phone number. The revised manifest will include this space in the Designated Facility's Name and Site Address field as a mandatory data element.

8. *Proposed Consolidation of Additional Descriptions and Special Handling Fields.* In the May 2001 NPRM, we proposed to remove Item J (Additional Descriptions for Materials Listed Above) from the manifest and to consolidate this information with that of existing Item 15 (Special Handling Instructions and Additional Information). Today's rule creates a combined data element, Special Handling Instructions and Additional Information, which appears as Item 14 on the revised manifest form. We proposed to consolidate these two data elements to create space on the revised form to accommodate the new International Shipments field and expanded discrepancy space, and because stakeholders previously had petitioned EPA to combine these two information fields.[1]

Comments on this proposal reflected a variety of views. While commenters did not object *per se* to our proposal to consolidate these two data elements, we received several comments expressing concerns about the amount of space allotted to the field, as well as many comments concerning the type of information that individual states might require in this block. Comments from generators, waste industry members and states stressed the need for more space on the revised manifest for the Special Handling and Additional Information field than we originally proposed. Industry commenters expressed the concern that the field, as proposed, would leave waste handlers too little space to enter waste profile information, bar codes depicting waste information, or information already required in this space by existing federal and state programs. State commenters echoed this concern, and one state (New York) added that the proposed field would not allow the state to track parameters such as the specific gravity of wastes (used to convert waste volume units to units of mass) or the ultimate handling code for wastes processed by multiple TSDFs. Industry comments also voiced strongly and frequently the concern that the revised Special Handling and Additional Information field would become a ''catch-all'' for entering various types of information. These commenters worried that eliminating many of the current ''state optional'' fields from the form would result in state programs requiring waste handlers to enter this information instead in Item 14 of the revised form. These commenters urged EPA to explicitly restrict the information that state agencies could require in this block, so that the anticipated paperwork burden reductions under the revised form would not be diminished.

In response to these comments, today's revised manifest form includes Item 14 as proposed, but with minor modifications. Because we accepted comments suggesting that EPA not include a third Transporter block on the revised form, and accepted also the comment that the proposed form provided too much space for the new International Shipment field, we were able to create additional space for purposes of Item 14.

More significantly, we are limiting the scope of information that users may enter in this field. Due to today's changes to other manifest form data elements, some of the previously required information in the ''Special Handling'' field of the Uniform Manifest will no longer need to be entered in Item 14. For example, the revised form includes a new International Shipment field, which tracks imports and exports of hazardous waste. Thus, it will not be necessary to enter export shipments' port of exit information in the revised form's Special Handling and Additional Information Block, nor will it be necessary for transporters to sign and date the manifest here to indicate when a waste shipment has left the U.S. Moreover, the revised form has space to enter up to six RCRA waste codes for each waste stream identified in Item 9b of the new form. Today's rule also clarifies that no more than six waste codes may be entered for each waste stream (*see* Section II.F.3 of this preamble), which should eliminate the need to enter additional RCRA waste codes in this block.

Under today's final rule, EPA is limiting the use of new Item 14 primarily to waste handlers to record their site-specific or shipment-specific information. This will allow waste handlers to supply information to facilitate the proper management or tracking of waste materials as required by their companies' business processes. With regard to the ''Special Handling'' aspect of this Item, we expect waste handlers to continue to use this field to enter waste profile numbers, container codes, Emergency Response Guide numbers, bar codes or other site-specific or company-specific tracking information. We anticipate that waste handlers may use the ''Additional

[1] The manifest reform effort began in 1990 with the filing of a rulemaking petition by the Association of State and Territory Solid Waste Management Officials (ASTSWMO). The petition requested, among other things, greater standardization of the manifest form, including the consolidation of these two elements. For further information about this petition, see RCRA Docket F–2000–UWMP–FFFFF.

Description'' field of the revised Item 14 to enter chemical names, constituent percentages, physical state or specific gravity of wastes identified with volume units in Item 9b of the revised form.

The federal regulatory uses of the Special Handling field of Item 14 are limited to: (1) Identification of the original manifest tracking number for rejected waste or residue shipments that are being forwarded to an alternate facility or returned to the generator under a second manifest; and (2) specification of PCB waste descriptions and PCB out-of-service dates under 40 CFR 761.207. Waste handlers, however, cannot be required to enter information in this space to meet state regulatory requirements.

We recognize that states have previously used the Additional Description field to record state-specific information such as ultimate process codes for treating wastes, information relating to eligibility for state-specific exemptions, and information indicating the eligibility of specific wastes for differential fees or assessments levied by some states based on how these wastes are managed. Since the revised form will no longer allow state-specific information of this type to be entered in Item 14, states will need to find other means to flag state-specific information of this type so that the standardized manifest does not become burdened with state-specific data requirements. To the extent that such state-specific information can be captured by waste code information, we urge the states to develop appropriate waste codes to convey this information, and require its entry among the waste codes to be recorded in Item 13 of the new form. In this way, all state-specific information requirements could be conveyed in Item 13 rather than being dispersed across several data elements. EPA will support the dissemination of information to manifest users on state waste code requirements, and we urge states to address any needed waste code changes during the period before the delayed compliance date of this rule.

9. *Continuation Sheet.* In the NPRM, we explained that the manifest system includes both the Uniform Hazardous Waste Manifest (EPA Form 8700–22) and the Uniform Hazardous Waste Manifest Continuation Sheet (EPA Form 8700–22A). We clarified that the continuation sheet includes many of the same data elements as the manifest form and merely adds additional fields to identify additional transporters or waste streams which do not fit on the manifest. In this regard, we explained our intent to implement the proposed revisions with respect to both the manifest and the corresponding data fields found on the continuation sheet. EPA requested that commenters consider both the manifest and continuation sheet in providing comments. The majority of commenters on the continuation sheet asked for clarification on its use and design.

In response to commenters' requests, we are clarifying today that the continuation sheet being published in the rule will continue to be used in the same way as the previous continuation sheet (*e.g.,* when more than two transporters transport the waste). Moreover, the design of the new continuation sheet closely mirrors the previous continuation sheet, except that it has been revised to incorporate changes being made to the manifest form. Thus, the continuation sheet no longer includes fields for State Transporter ID numbers or phone numbers or the field on the previous continuation sheet denoted Item S, Additional Descriptions for Materials Listed Above. Eliminating these blocks freed up space on the continuation sheet which allowed us to add an additional row in the U.S. DOT Description block, increasing the number of rows from nine to ten. The continuation sheet no longer includes blocks for a Manifest Document Number or a State Manifest Document Number. These have been replaced by a block requiring a unique, pre-printed Tracking Number that will serve essentially the same function as the Manifest Document Number and State Manifest Document Number. However, the new continuation sheet includes a single field for the generator's EPA or state ID Number. The continuation sheet also includes fields for federally required waste codes and Hazardous Waste Report Management Method Codes and includes a Discrepancy field if additional space is needed to describe a manifest discrepancy. Unlike the Discrepancy field on the manifest form, the continuation sheet's Discrepancy field does not include check boxes to indicate the type of discrepancy or a designated space to provide the manifest reference number. EPA believes the manifest form's Discrepancy field provides ample space for this information. Finally, whereas the previous continuation sheet included letters ''a'' through ''i'' in the nine rows of the U.S. DOT Description field, EPA has removed these letters from this field in the new continuation sheet and will now require the manifest preparer to number these rows. EPA reasons that the manifest preparer may need to complete multiple continuation sheets for a shipment and that the preparer should number these rows consecutively from one continuation sheet to the next, to reflect the total number of wastes being shipped. The numbering of the wastes on the first continuation sheet should start with Waste #5, and should continue from there forward until all wastes being shipped have been numbered and identified.

C.1. *Addition of New Data Elements—Introduction.* The May 2001 NPRM suggested several new data elements that stakeholders argued were necessary or useful to improve the hazardous waste manifest as a tool for tracking waste shipments, for facilitating emergency responders' activities and recording waste management data. Specifically, the NPRM proposed and solicited comment on: (1) Adding a Generator Site Address field to the form; (2) adding an Emergency Response Telephone Number field; (3) adding an International Shipments field; and, (4) adding a third Transporter field to the transporter information area of the manifest.

The NPRM also included several other new waste tracking elements that could be viewed as additions to the manifest form. Specifically, we proposed to expand the space on the form reserved for recording RCRA waste codes (current Block I). The current Uniform Manifest includes space for one RCRA code; the proposed rule would have enlarged this space to accommodate up to six federal or state waste codes. Furthermore, the proposed rule suggested expanding the Discrepancy field by adding check boxes and information fields to facilitate tracking rejected waste shipments and shipments involving non-empty container residues. We received many comments on our proposal to expand the waste codes, as well as the rejected waste and residue tracking requirements. Since these proposals involved more complex substantive issues than the other proposed additions summarized in this section, we discuss our final decisions on the waste code and discrepancy space proposals below in separate Sections II.F. and IV.A.2 of this preamble.

2. *Addition of Generator Site Address Field.* While requesting comment on our proposed reductions in state optional fields (*see* 66 FR 28240 at 28254), we also requested comment on a stakeholder suggestion to include a space on the form to record the generator's physical site address, either in lieu of or in addition to the current requirement for generators to provide their mailing address on the form. Although we did not include the

Generator Site Address field in the proposed rule form, we highlighted the issue and solicited comment on its merits. Originally, we refrained from including the Site Address field in the proposed rule form because we wanted to avoid introducing duplicative data elements to the manifest form. At that time, we thought that the manifest already included the site-specific Generator ID number, and we believed that this site-specific number, in tandem with the generator's mailing address, was sufficient to identify a generator site by location.

Comments on this issue, however, persuaded us to include the Generator's Site Address field on the revised form. This issue was of great interest to the authorized states who identified the addition of the generator site address as a priority issue during the development of the proposed rule. Our state agency partners advised us that the mailing address for a company's corporate offices could be in a different state from the site address where waste shipments actually initiated. Thus, manifest copies could be routed erroneously to the state corresponding to the mailing address, rather than to the state responsible for overseeing the generation site. In addition, these states suggested that the EPA Generator ID number was not always a reliable site-specific identifier of generation, and that the Generator's Site Address on the manifest would be a more reliable indicator of the origin of a waste shipment in a manifest system that purports to track waste from ''cradle-to-grave.'' Furthermore, a site address is necessary in those instances where shipments must be returned to the generator. Although industry commenters tended to oppose the proposal to add a Generator's Site Address field to the form, some agreed it would be useful for returning shipments.

After considering these comments, we have decided to include the Generator's Site Address field on the manifest. We retained the current requirement to enter a generator's mailing address, because we believe that the generators should be able to designate a corporate office where signed copies of the manifest are collected and managed. We do not believe that requiring generators to enter their site address overburdens them since they only have to do so when this location differs from their mailing address. To ensure that the new field's limited use is understood clearly by waste handlers, the field's caption contains distinct text explicitly stating that the site address should only be entered when it is different from the mailing address.

3. *Addition of Emergency Response Phone Number Field.* Because the hazardous waste manifest is also a ''shipping paper'' under DOT's Hazardous Materials Regulations (HMRs), it must include information specified in the HMRs for shipping papers. As we explained in the proposed rule, DOT currently requires an Emergency Response Phone Number on the shipping paper for most shipments of hazardous materials (*See* 49 CFR 172.604). Without discrete space provided for this regulatory requirement on the manifest, generators have complied by entering the emergency responder's phone number in either the margin of the form, the Generator's Phone Number field, the Special Handling field, or in the spaces designated for DOT shipping descriptions.

The Emergency Response Phone Number field provides vital information for emergency responders to use in the event of an accident or other serious incident that occurs while a hazardous materials shipment is en route to its destination. The phone number must belong to the generator or other agency or organization that accepts responsibility for providing detailed information about the shipment. Additionally, the number must correspond to a phone that is monitored 24 hours per day while the waste is in transportation. The person assigned to this phone must have either personal knowledge or immediate access to a person with knowledge of the material being shipped, as well as comprehensive emergency response, spill cleanup and incident mitigation information about the material. To communicate the importance of this information, EPA proposed in the NPRM to add a specific data element to record this information. Also, to ensure that there would be neither redundancy in the recording of phone numbers nor ambiguity about which phone was intended for emergency response purposes, we proposed to eliminate the two optional Transporter Phone Number fields. We are finalizing this approach in today's final rule. Therefore, under today's revised manifest form, the manifest will continue to require the phone numbers of the generator and the designated TSDF (so that exceptions and discrepancies can be resolved) to be entered, and it will now require as well the phone number designated for the vital emergency response functions. The revised manifest form will not provide space for entering additional transporter phone numbers.

The use of the Emergency Response Phone Number field (Item 3) is appropriate for those cases in which the listed phone number applies to every item of waste material listed in Item 9b of the manifest. However, there may be instances (*e.g.,* consolidated shipments) where more than one emergency response number may apply to the various waste items listed on the manifest, because specific listed items may be associated with different emergency response numbers. In these cases, DOT regulations specify that the applicable emergency response numbers should appear immediately following the shipping descriptions under Item 9b. See 49 CFR 172.604(a)(3). Therefore, in order to maintain consistency with the applicable DOT regulations, today's rule also clarifies that Item 3 is to be used for entering emergency response phone information only when there is one Emergency Response Phone Number that applies to all the waste materials described in Item 9b. Otherwise, the phone number associated with each specific material should be entered after the description of the material in Item 9b.

4. *Addition of International Shipments Field.* In the May 22, 2001 NPRM, we proposed to revise the manifest form by adding an explicit field for recording information on transboundary shipments of hazardous wastes. These shipments involve imports and exports of hazardous waste to and from the U.S. under bilateral agreements or other arrangements with foreign governments, waste importers and waste exporters. Current regulations require hazardous waste exporters to record the waste's port of exit on the form; transporters exporting waste must sign and date the manifest to indicate when the shipment left U.S. territory and leave a copy of the manifest with U.S. Customs officials.

While these hazardous waste export requirements already apply to exporters and transporters, the current Uniform Manifest does not reserve any specific space for collecting this data. In order to comply with existing regulations, exporters enter the port of exit and transporters provide the date and signature for a shipment leaving the U.S. in the Special Handling and Additional Information field of the current form. In several cases, transporters found to be out of compliance with the current requirements have alleged that their violations resulted partly from a lack of clarity on the manifest form as to how and where they should enter the information.

To alleviate this problem and reduce the complexity and burden of completing the manifest, we proposed

to add International Shipments, Item 16, to the revised form. The proposed changes provide explicit spaces for entering currently required information. The International Shipment field would provide the exporter with a check box to indicate an export and a space for entering the port of exit. Similarly, this data element would provide transporters with a discrete data element for indicating the date an export shipment leaves the U.S. and a signature line to attest to it.

With respect to imports, the NPRM proposed to add new tracking requirements and corresponding data elements in the International Shipments field. The proposed import elements parallel those that already apply to exports of hazardous waste. Thus, the proposed International Shipments field would provide a check box for importers to indicate an import shipment and a space to identify the port of entry. We did not propose any requirements for transporters to sign off on import shipments in this new data field because import shipments will be closed out domestically by the signature of the receiving facility in the U.S. However, the NPRM proposed that transporters importing hazardous waste shipments leave a copy of the manifest with U.S. Customs. This copy aids EPA in collecting consistent information on hazardous waste imports, rather than relying on the piecemeal information that currently comes to the Agency under informal arrangements with border states and port authorities.

Generally, commenters reacted positively to the proposed International Shipments field and the proposed requirement to submit a copy of the import manifest to U.S. Customs. Most generators, TSDFs and authorized states agreed that including an explicit field for transboundary waste movements was a good idea and would not pose any unreasonable compliance issues. However, many commenters contended that too much space seemed to be allocated for this purpose. Since nearly all available space on the proposed form has been utilized, one commenter suggested that the International Shipments field be removed from the domestic manifest and that a distinct new manifest form be developed to address international waste movements. Other commenters expressed the view that the rule should clarify that exporters rather than generators are responsible for entering the required export data, and that EPA should clarify the status of international shipments that are rejected by consignees and must be returned to the country of origin.

In response to these comments, EPA is finalizing the rule with the International Shipments field retained on the revised form, as proposed but with some modifications. First, we have reduced the field size since excessive space was dedicated to the field on the proposed form relative to the amount of data that actually needs to be collected. We also emphasize that primary exporters are required to complete export manifests as required under current regulations. As long as they are not the primary exporters, domestic generators do not have to complete this portion. Although some commenters requested that EPA clarify the status of rejected import shipments, that involves interpretations of waste export policies and bilateral agreements that are beyond the scope of this rulemaking.

Second, we are removing the proposed provision at § 263.20(i), which required transporters who are transporting hazardous waste into the United States to leave an extra copy of the manifest with a U.S. Customs official at the point of entry into the United States. Instead, we have added a new provision (a)(3) in paragraph (a) of §§ 264.71 and 265.71. This new provision requires the receiving facility to mail a final, signed copy of the manifest to the following address within 30 days of delivery: International Compliance Assurance Division, OFA/OECA (2254A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

We also have revised the proposed provision at § 262.60(e), which required the importer to provide the transporter with an additional copy of the manifest for delivery to the U.S. Customs official at the point the hazardous waste enters the United States in accordance with § 263.20(g)(4). We revised this provision by removing the reference to § 263.20(g)(4) and replacing that reference with references to new §§ 264.71(a)(3) and 265.71(a)(3). The resulting effect of these revisions to the proposed requirements would still be the same as that of the proposed requirements—*i.e.*, copies of import manifests will be delivered to EPA for tracking purposes. However, the means for achieving this result have changed from a drop-off requirement for the transporter to a direct mailing requirement for the receiving facility.

We believe this revised approach is more appropriate than the proposed approach, because it parallels existing manifest mailing requirements for receiving facilities. Specifically, §§ 264.71(a)(2)(iv) and 265.71(a)(2)(iv) in the proposed rule require receiving facilities to mail copies of manifests to generators within 30 days of delivery of hazardous waste shipments. (In addition, some states also require receiving facilities to mail them copies of manifests upon receipt of hazardous waste shipments.) EPA believes that TSDFs, as receiving facilities, are well situated to mail a copy of the final, signed copy of the manifest to EPA for tracking purposes since they are already required to, and are in the practice of, mailing a copy of the same document to generators and, in some cases, to states as well. EPA believes that TSDF mailing of a copy of the manifest to EPA is a more direct and efficient way for EPA to receive this document than the proposed approach of transporter drop-off of a copy of the manifest to U.S. Customs at the port of entry into the U.S. In addition, this new approach results in EPA's receipt of a copy of the manifest at a final stage of the transport process when the receiving facility has actually received the hazardous waste, rather than at an earlier stage of the process, when the transporter has brought the hazardous waste into the U.S. port of entry. It makes more sense for EPA to receive a copy of the manifest from the receiving facility at this final stage, when there is clear closure to the manifest process.

Finally, EPA has not accepted the comment requesting the adoption of a separate manifest for international shipments. The great majority of commenters seemed to agree that the proposed International Shipments field should appear on the Uniform Manifest. While we understand that space could be saved on the domestic manifest form if the International Shipment field was not established, we believe that the more desirable outcome of this rulemaking is to adopt one standardized manifest format, rather than adopting multiple formats with redundant information.

5. *Proposed Addition of Third Transporter Field.* The May 2001 NPRM proposed to revise the form by adding a third Transporter field. At the time, we believed that providing a third Transporter field would be useful for waste handlers and would reduce paperwork burden in the manifest system. In previous discussions, stakeholders advised us that waste shipments implicate a third transporter frequently enough to warrant our creating a new field on the Uniform Manifest, and that completing a third Transporter field would cause less burden than completing the more extensive data requirements contained in the continuation sheet.

Comments on the proposed rule did not support including a third Transporter field. Upon viewing the draft of the revised form, commenters became aware that no space was available to accommodate non-essential data elements. We received several comments from industry and state commenters suggesting that a third Transporter block should not be included on the revised form, since a third transporter was not used often enough to warrant taking up valuable space that could be better allocated toward shipping descriptions or other data elements that commenters regarded as more critical. We agree with these comments and have accepted the suggestions to exclude the third Transporter item from the revised form. Today's final rule withdraws both the third Transporter item and the corresponding signature space for the third transporter from the revised manifest form.

D. *Reduction or Elimination of ''Optional'' Field Designations.* Another facet of manifest form standardization deals with the degree to which the form will continue to provide state optional fields for use by authorized states. In the 1984 Uniform Manifest Rule, EPA announced the availability of eleven such fields that states could select from and require waste generators to complete. These optional fields were established based on state agency consultations and were intended to collect information commonly required by authorized state programs. The eleven state optional fields were displayed primarily in the form's upper right portion. The left-hand side of the form included the mandatory federal data elements supporting RCRA mandated and federally required core transportation-related and waste shipment routing functions. Neither the federal transportation laws nor RCRA 3003 mandated the establishment of these optional fields, and EPA and DOT could have established a manifest that did not allow for such state variations. However, at the time the Uniform Manifest Rule was initially developed, EPA and DOT were convinced that including optional fields would be acceptable. If these types of information needs could be accommodated on the manifest form, then it would not be necessary for the states to require waste handlers and facilities to submit separate reports containing this information.

While this policy may have seemed beneficial in 1984, we now have had almost twenty years of experience with the Uniform Manifest and the coexistence on the form of mandatory federal elements and state optional fields. Over the course of the negotiated manifest reform rulemaking activity in the early 1990s and continuing through the development of our proposed rule in May 2001, we have consistently heard strong complaints from manifest users about the current system. Users have told us that the current manifest system is burdensome because it allows too much variability among the manifests codified in state statutes or regulations and distributed by the various states. Thus, it became a goal of this rulemaking to reduce or eliminate this variability, if this could be done practically and could be accomplished without undue disruption to the authorized states' RCRA programs.

In Section II.B., we explained our final decisions on action we took to remove several of the data elements on the current manifest. We removed several optional fields that were either duplicative or nonessential, while retaining several others and designating them as mandatory for future purposes in the revised form. In total, we eliminated nine of the current optional fields; we also revised § 271.10(h)(1) by removing the provisions in this section that correspond to those nine optional fields. Whether these fields were eliminated or designated mandatory, they will no longer cause burdensome variability under the newly revised form.

In our May 2001 proposed rule notice, we proposed to retain two optional fields on the revised form. We knew from years of experience with the manifest system that states considered RCRA Waste Codes (current Item I) and Handling Codes (current Item K) two of the most valuable fields on the form. States used these codes to track waste generation and management trends, to facilitate the completion of or verify annual or biennial report submissions, and to support state assessments that are levied for waste generation or management activities. Our intention at the time of the proposal was to expand waste code information space and to standardize any handling codes that users entered to describe waste management processes. We proposed to retain these elements as optional fields. However, we requested comments on whether handling codes should be made mandatory in all the states, and on additional ways to integrate manifest data collection with the RCRA biennial reporting process.

The comments on this issue were strong and nearly unanimous. Nearly every commenter urged EPA to finalize the rule with mandatory waste codes and handling codes, rather than retaining their current optional field designations. Commenters further explained that completing a manifest that was consistent across states would reduce their compliance burden because they would not have to spend time determining which of the optional fields were used by each state. The Agency was impressed that commenters identified standardization as a preeminent goal. Commenters urged us to go further than our proposed rule by adopting a truly standardized manifest that eliminates all optional field designations.

EPA agrees with the comments urging us to eliminate all optional field designations from the manifest form. Therefore, EPA declares that all fields set out in this final rule's revised form are mandatory. You can find additional discussion of the standardization of handling code and waste code reporting on the manifest in Sections II.E.5. and II.F.6. of this preamble. When the revised form is in use among the states, there will no longer be optional fields to determine and complete.

E.1. *Proposed Standardization of Handling Codes-Introduction.* In the May 2001 NPRM, EPA proposed to standardize the Handling Codes information field on the revised manifest. On the current form, Handling Codes is a state optional field, to be entered in Item K of the Uniform Manifest. As we explained in the proposed rule preamble (see 66 FR 28240 at 28256), authorized states currently implement the Handling Codes field in a variety of ways. Some states require handling codes as set out in Appendix I, Table 2 under 40 CFR Parts 264 and 265, while other states require processing codes assigned for purposes of the RCRA Biennial Report. Other states have developed their own process codes, which have special meaning in the states' databases and determine how states assess waste management fees. Stakeholders identified variability in the states' use and meaning of handling codes as an issue under the current manifest system, particularly for the generators and TSDFs that were subject to multiple states' handling code requirements.

Moreover, during meetings on the development of the proposed rule, industry members and states both urged EPA to standardize the handling codes and harmonize them with RCRA Biennial Report process codes. This would not only eliminate variability among the states on what codes would be entered, but it also would help integrate manifest data collection with the biennial reporting process. Ultimately, including the process codes

used for biennial reporting could eliminate or greatly reduce waste handlers' and states' current burden of separately gathering and reporting this waste management information.

2. *Content of the Handling Code Proposal.* Based on broad stakeholder interest in this issue, EPA proposed in May 2001 to rename the Handling Code field ''Item B,'' since, at that time, this field would remain optional. In cases where the states required handling codes, we proposed that responsibility to enter the process code information would fall on TSDFs, who are most familiar with the waste management processes and the codes used to identify them. Additionally, consistent with stakeholders' views, we proposed that the handling codes entered would be the process codes used in connection with the RCRA Biennial Report. At the time we developed the proposed rule, these codes were referred to as the Biennial Report System Type Codes. Recently, the biennial reporting system was revised and is now known as the Hazardous Waste Report. The process codes also have been revised somewhat and renamed the Hazardous Waste Report Management Method Codes.

3. *Standardization of Handling Codes.* EPA also requested comment on whether state, industry, and other stakeholders would prefer a new list of codes as an alternative to using the full list of Hazardous Waste Report Management Method Codes. There was some sense that a smaller code set could be more manageable to implement, and might still provide sufficient information distinguishing major process types. Comments nearly unanimously expressed support for standardizing the handling codes on the revised manifest and particularly the proposal to standardize the data to be entered based on biennial report process codes. Only one TSDF commenter argued against including this information on the manifest, contending that the information was not necessary to track waste. Other TSDFs and authorized states agreed that including and standardizing the process codes would be beneficial. While a few TSDFs argued that generators should enter the process codes, the large majority of TSDFs, as well as states commented that the TSDFs could enter this information on the manifest more effectively. Several industry commenters suggested that the final rule clarify that the code entered here should reflect the final handling of the waste by the TSDF shown as the designated facility on the manifest, and not the ultimate disposition of the waste by some other facility. Similarly, one state suggested that the form provide a second box for entering codes for the final disposition process, if different than the process code for the designated facility.

Most of the commenters agreed with the reasoning set out in the proposed rule that using the proposed System Type Codes (now known as Hazardous Waste Report Management Method Codes) would increase consistency with the biennial report requirements, thus aiding in completing and reducing the burden associated with the biennial report. The majority of commenters also preferred using the entire list of process codes developed for biennial reporting, rather than creating a new list containing a subset of the process codes.

4. *Adoption of Hazardous Waste Report Management Method Codes.* Based on comments we received on this subject, today's final rule establishes one set of codes and instructions for all manifest users in all states for the aforementioned reasons. Therefore, today's rule requires TSDFs to enter data in Item 19, entitled Hazardous Waste Report Management Method Codes. We are also clarifying, as commenters suggested, that the code in Item 19 corresponds with the final disposition of the waste by the designated facility on the manifest. EPA believes that it would be confusing and inappropriate to expect a TSDF to enter an ''ultimate disposition'' code reflecting how the waste was to be processed at another facility. Thus, we are not accepting the comments suggesting that space be provided for entering ultimate disposition codes, as there was not significant support expressed for this approach.

Hazardous Waste Report Management Method Codes should be entered in Item 19 of the revised manifest. These codes are updated routinely and published in the instructions accompanying the current edition of the Hazardous Waste Report forms. For the convenience of readers of this final rule, EPA is publishing the updated list of Hazardous Waste Report Management Method Codes as they exist at the time of this rule's publication. However, these codes are subject to change over time, and manifest users are urged to refer to the most recent instructions for the Hazardous Waste Report for the most current and accurate set of codes to be entered in Item 19. You can also find an updated list of codes at EPA's Web site: *www.epa.gov/epaoswer/hazwaste/data/index.htm#br*. The left column of the table below corresponds to the Hazardous Waste Report Management Method Code for a process, while the right column corresponds to the System Type Codes that were in use before the establishment of the Hazardous Waste Report Management Method Codes.

Hazardous Waste Report Management Method codes describe the type of hazardous waste management system used to treat or dispose a hazardous waste.

Code	Hazardous waste report management method code group	Corresponding codes from 1999 hazardous waste report*
	Reclamation and Recovery	
H010	Metals recovery including retorting, smelting, chemical, etc	M011–M019
H020	Solvents recovery	M021–M029, M104
H039	Other recovery or reclamation for reuse including acid regeneration, organics recovery, etc	M031–M039
H050	Energy recovery at this site—use as fuel (includes on-site fuel blending)	M051–M059
H061	Fuel blending prior to energy recovery at another site	M061
	Destruction or Treatment Prior to Disposal at Another Site	
H040	Incineration—thermal destruction other than use as a fuel	M041–49
H071	Chemical reduction with or without precipitation	M071
H073	Cyanide destruction with or without precipitation	M073
H075	Chemical oxidation	M075
H076	Wet air oxidation	M076, M084, M093
H077	Other chemical precipitation with or without pre-treatment	M072, M074, M077
H081	Biological treatment with or without precipitation	M081, M091

Code	Hazardous waste report management method code group	Corresponding codes from 1999 hazardous waste report*
H082	Adsorption	M082, M092, M103
H083	Air or steam stripping	M083
H101	Sludge treatment and/or dewatering	M101, M102, M109
H103	Absorption	M103
H111	Stabilization or chemical fixation prior to disposal at another site	M111
H112	Macro–encapsulation prior to disposal at another site	M112, NEW
H121	Neutralization only	M121
H122	Evaporation	M122
H123	Settling or clarification	M123
H124	Phase separation	M124
H129	Other treatment	M078, M079, M085, M089, M094, M099, M119, M125, M129
	Disposal	
H131	Land treatment or application (to include on-site treatment and/or stabilization)	M131
H132	Landfill or surface impoundment that will be closed as landfill (to include on-site treatment and/or stabilization).	M132, M133
H134	Deepwell or underground injection (with or without treatment)	M134
H135	Discharge to sewer/POTW or NPDES (with prior storage—with or without treatment)	M135, M136
	Storage and Transfer	
H141	Storage, bulking, and/or transfer off site—no treatment/recovery (H010–H129), fuel blending (H061), or disposal (H131–H135) at this site.	M141

* For clarification only. Use the Hazardous Waste Report Management Method codes in the left column only (*i.e.*, codes beginning H____).

5. *Designation of Process Codes as Mandatory.* While we proposed to retain the revised handling codes as an optional field for use by states, we also requested comment on whether to deem Hazardous Waste Report Management Method Codes a mandatory field. At that time, we were wary of imposing new reporting burdens on those waste handlers in states that did not require handling codes. On the other hand, we were aware that much of the manifest use burden arose not so much from completing individual data elements, but from determining what elements were required in individual states and by complying with state-specific information and instructions. The great majority of commenters expressed a strong desire to designate the handling codes mandatory for use in all states. Because most states which currently require the codes will continue to require them, the commenters did not see any reason to maintain the optional status. The commenters also believed that making one set of codes mandatory would reduce the burden associated with completing the manifest; rather than having the regulated community learn several different coding systems, one set of codes would be used in every state. This change would increase consistency in manifest requirements and likely reduce paperwork burdens. Therefore, today's final rule mandates the entry of the Hazardous Waste Report Management Method Codes on the manifest. In addition, EPA has re-designated the Hazardous Waste Report Management Method Code field as Item 19 (rather than Block B) in the revised form and placed it in the bottom section of the form among the data elements that designated facilities must complete.

6. *Party Responsible for Completing Item 19.* The majority of commenters supported our proposal to identify the designated TSDF as the party responsible for completing Item 19. TSDFs often determine waste management methods on a day-by-day basis, (*e.g.*, TSDFs may use fuel blending on a waste stream on one day and solvent recovery the next). Consequently, many commenters argued that generators could not be expected to foresee the management method the TSDF would choose for a particular shipment of waste. On the other hand, several commenters were concerned that the generator would continue to be held responsible for the disposal of the waste, yet the generator would lose control of the waste's disposal if TSDFs entered this information.

Today's rule finalizes the requirement for TSDFs to complete Item 19 as proposed. While generators must ensure their wastes are disposed of at authorized facilities, their responsibility does not extend to controlling the disposal process. In most instances, the disposal firm is an independent contractor. Therefore, we believe it is appropriate for TSDFs to enter the process code reflecting their management of the waste, rather than requiring the generator to enter this information.

F.1. *Proposed Standardization of RCRA Waste Code Fields—Introduction.* In the May 2001 NPRM, we proposed: (1) To redesignate the block for entering RCRA waste numbers as Block A and to title this block ''Waste Codes;'' (2) to expand the space provided for entering waste codes to accommodate up to six codes for each material identified with a distinct DOT description; (3) to designate the top three spaces in Block A for the entry of federal waste codes, and the bottom three spaces for state waste codes; and, (4) to establish a toxicity-based hierarchical approach for determining the ordering of waste codes on the new Waste Codes field. The purpose of the hierarchical approach was to ensure that waste codes suggesting the presence of high toxicity wastes would appear first on the form, so that manifest users and emergency responders would be alerted to their presence. Finally, EPA proposed to retain RCRA waste codes as an optional field for states. At the time of the proposal, we did not want to impose additional reporting burdens on waste handlers operating in states that did not require waste code data.

2. *Comment Analysis.* We received many comments from authorized states and from industry on the proposal to expand the waste code field and the

proposal to divide space between federal and state waste codes. State agency commenters strongly favored the proposed expansion that would allow the reporting of up to six waste codes in proposed Item A, although comments differed on how to allocate the expanded space between federal and state waste codes. Some state comments supported a side-by-side array of the federal and state codes, while others asked us not to differentiate between federal and state codes. Industry commenters provided additional detail on these points. While most industry commenters supported the proposal to provide space for three to six waste codes, two large TSDFs noted that in their vast experience with manifests, space for four federal codes ordinarily would be sufficient. As with the state comments, several industry commenters suggested that the rule allow users to allocate the space between federal and state codes as they saw fit, rather than limiting them to entering three federal codes and three state codes. These comments also criticized the proposed approach to divide the state waste code space between the generator state and the consignee state, as this would probably generate confusion.

State commenters generally supported requiring or allowing users to enter all applicable waste codes, entering any overflow from existing Block A in the ''Additional Descriptions'' space. Several industry commenters also supported the idea of entering all applicable waste codes (utilizing the Additional Descriptions space). Believing that six codes were more than sufficient to characterize the properties of a hazardous waste, others suggested that the final rule should restrict waste code entries to no more than six codes per waste stream.

Industry commenters raised additional concerns related to using the RCRA manifest to enter state waste codes. In an effort to further reduce the burden incurred by users in entering waste code data, several commenters suggested that EPA clarify in the final rule that state waste codes could be entered on the revised manifest form only to the extent that they were not redundant with federal waste codes established by EPA. These commenters argued that it makes little sense to use both a federal code and a distinct state waste code to describe the same material on the manifest, especially since paperwork burden reduction is a major objective of this rulemaking.

However, the waste code issue that generated the greatest level of interest was the proposed hierarchical approach to entering federal waste codes in the Item A space. In the May 2001 NPRM, we proposed a waste code hierarchy intended to order federal waste codes according to their toxicity properties, alerting manifest users and emergency responders to their presence. The hierarchical approach would not have applied to state waste codes. The proposed hierarchy specified the following ordering of federal waste codes:

I. All acutely hazardous wastes, including all P-listed wastes and all acutely hazardous F-listed wastes,

II. U-listed wastes (toxic),

III. K-listed wastes (specific sources),

IV. Non-acute F-listed wastes (non-specific sources), and

V. D wastes (characteristic).

The proposed rule also stipulated that in instances where states designated ignitable and reactive wastes as priority waste classes, these wastes would be entered first in Block A, ahead of the waste types that would otherwise appear first in the above hierarchy.

While several commenters supported the hierarchy concept, EPA received many more comments critical of the hierarchy proposal. The supportive comments pointed out that a hierarchy would usefully limit the number of codes entered on the form, because one would only need to enter the first six codes identified under the hierarchy. Other commenters emphasized that the hierarchy would be useful for completing the manifest consistently across all jurisdictions. A few comments suggested that the hierarchy approach would be improved if ignitable and reactive wastes always were placed at the top of the hierarchical ordering, while other comments indicated that the order should not be affected at all by ignitable or reactive wastes.

However, the commenters criticizing the proposed waste code hierarchy raised many other concerns. The strongest comments of this type suggested that the proposed hierarchy was valueless for communicating the real hazard posed by a waste. These comments pointed out that the hierarchy could miscommunicate hazards posed, since a P or U waste code still might be associated with a waste under the RCRA ''derived-from'' rule, even though the constituent involved may be present in minuscule quantities. Other comments focused on the overly simplistic assumptions underlying the proposed hierarchy, stating that one could not assume that all P wastes were more toxic than U wastes or that all U wastes were more toxic than K wastes, etc. Still other commenters explained that the hierarchy did not serve our stated purpose. They emphasized that TSDFs rely upon their waste profile information to determine the acceptability of wastes at their facilities, while users and emergency responders relied much more on DOT nomenclature (i.e., the shipping descriptions entered in Item 9b) to gauge the hazards of materials in transportation. It was further suggested that the proposed waste code hierarchy would be duplicative with DOT's system and could result in confusion. The commenters that were highly critical of the proposed hierarchy scheme preferred to allow manifest users to exercise their own judgment when ascertaining which waste codes are most representative of a waste.

3. *Final Rule Determinations—Number and Allocation of Waste Codes.* While the proposed rule suggested that additional waste codes could be entered in Item 9b (as part of the U.S. DOT Description) and in the ''Additional Information'' space (Item 14 of the revised form), we were persuaded by comments stating that six waste codes normally would be more than adequate to describe hazardous wastes commonly shipped under the manifest. Waste codes must continue to be included in the Item 9b ''U.S. DOT Descriptions'' where a RCRA waste code is required to complete a shipping description for a hazardous waste with the DOT ''not otherwise specified,'' or ''n.o.s,'' notation. However, it is not necessary to list any additional waste codes in Item 14 that might be applicable to a waste stream. We are persuaded that the provision of space for six codes in Item 13, augmented by any other codes required to be included in Item 9b for n.o.s. shipping descriptions, will be sufficient to describe hazardous wastes for the purposes of the manifest. Commenters pointed out that many facilities provide large lists of waste codes on the current manifest as a protective filing measure. We believe that this creates unnecessary burden in completing the manifest, without improving appreciably the quality of the hazardous waste data.

We also are accepting the comments that criticized the proposed rule for trying to allocate the space available between three federal waste codes and three state waste codes, and for trying to allocate space between generator state codes and consignee state codes. Therefore, the final rule leaves it largely to the users' discretion to assign the appropriate combination of federal and state codes to describe a waste, up to a maximum of six codes. As we explain below in section II.F.4., the users' discretion to assign these waste codes is

limited somewhat when a hazardous waste is described by a non-redundant state waste code that identifies that a waste is regulated uniquely or subject to a differential fee imposed by a state hazardous waste program. In such a case, the state waste code must appear among the 6 waste codes that describe such a waste. We also are finalizing the waste code space on the revised form without any partitions between individual digits or characters, since commenters indicated that the inclusion of partitions actually could frustrate reporting these data legibly.

4. *Final Rule Determinations—Entering State Waste Codes.* In addition to commenting on the number of waste codes users may enter in Item 13 of the revised form, commenters suggested that the RCRA hazardous waste manifest should only include information on federally regulated RCRA wastes. Other commenters expressed the view that this rule should affirm that states may require users to enter state waste codes on the revised form, so long as no corresponding federal code exists that describes the same waste. Other commenters expressed the same or similar point of view, suggesting that redundant state waste codes should not be entered on the form.

We continue to believe, as we first indicated with the first Uniform Manifest Rule in 1984, that it is preferable to include federal and state waste codes on the RCRA manifest. Including both types of codes avoids the need for hazardous waste handlers to develop separate recording systems to report their involvement with state regulated wastes. However, in this final rule, we clarify in Item 13 of the form instructions and in § 271.10(h)(1) that state waste codes are to be included on the revised manifest form where they are not redundant with federal waste codes describing the same waste. The federal RCRA waste codes are understood nationwide, so in cases where a state code duplicates entirely a federal code for a RCRA hazardous waste, it serves the burden reduction purposes of this rulemaking to enter only the federal code on the revised manifest. Thus, state waste codes must be entered on the revised form to describe state regulated hazardous wastes for which there is no corresponding federal code, as well as state codes which convey additional information not conveyed by the corresponding federal code. These state codes most often appear in connection with what are known as the ''state only'' hazardous wastes, that is, wastes which are regulated as hazardous in an authorized state program, but not under the Federal Subtitle C regulations.

However, examples also exist where there may be a federal waste code that corresponds generally to a waste, but the state adopts a unique code or perhaps adds another character to the federal waste code to designate that there are requirements unique to that state that apply to the waste. Since this information is not conveyed by the federal code itself, the state's adoption of a unique code or its addition of another character to the federal code would not be considered redundant with the federal code for purposes of this rule. These state codes must be entered in the space allotted for federal and state waste codes in Item 13 of the revised form. There is no discretion to omit such state codes from Item 13 of the revised form.

As one example, a state may regulate a hazardous waste identified with a federal waste code (*e.g.*, lead wastes, regulated federally for lead levels at or above 5.0 mg/L, and denoted D008), but regulate differently or more extensively than the EPA rules (*e.g.*, a state regulates lead wastes at the 1.0 mg/L level or higher). Similarly, a state may regulate a listed federal hazardous waste, but regulate it for the presence of constituents other than those which gave rise to the federal listing decision. In such cases, a specific state code that identifies the materials that are regulated uniquely by the state in such a manner must be included on the manifest.

As another example, a state may require its generators to add the letter ''R'' to a federal waste code to indicate that the waste described by the federal code is to be recycled, or may require the letter ''C'' to be added to a federal code to indicate a waste has been commingled with other generators' wastes. The state may need to know which wastes are recycled or commingled because it assesses a differential waste management fee or applies additional management requirements to the recycled or commingled wastes that are so identified. Again, it is not a redundant state code if the state code or a state-required addition to a federal code serves to distinguish a waste that is regulated uniquely or differently in the state, or to distinguish wastes subject to differential fees or similar requirements based on the nature of the waste or how it is processed.

EPA has made it a focus of this rulemaking to reduce the variability that appeared among the manifest forms that are currently distributed by authorized states. The elimination of optional fields, the standardization of handling codes, and the new registry and acquisition procedures are examples of significant manifest reforms we have adopted to address this issue. Nevertheless, all variability cannot be eliminated. However, we believe that the variability problem has been greatly improved by this rule, in that variability which may have been dispersed among 11 optional fields on the old form has been reduced to variability limited to the reporting of state waste codes. States may develop additional waste codes in response to today's rule in order to designate wastes which qualify for state specific exemptions, wastes which are subject to a differential waste management fee based on how a waste is managed, or wastes which are subject to other state-specific management conditions. While this may have the effect of increasing the number of state-specific waste codes, we believe this is a preferred outcome to allowing varying information to populate other fields of the form.

5. *Final Rule Determination—Waste Code Hierarchy.* Many commenters expressed views about the proposed hierarchy approach. We were most impressed by the significant number of comments assuring us that in the great majority of cases, there really was no need to apply any hierarchical ordering of waste codes. These commenters stated that four to six waste codes would be sufficient in all but a few cases to describe a waste's properties, and with space provided now to show six codes, it was not critical to order them with a hierarchy.

Ordering of waste codes, however, could be more useful for special types of wastes (*e.g.*, lab packs, incinerator ash) for which there are potentially more than six waste codes that could describe the wastes. We examined the comments to determine if there were views expressed suggesting that these complex wastes might benefit from a waste code hierarchy.

After considering all these comments, the final rule abandons the requirement to order waste codes according to any hierarchy. We may have reached a different conclusion if commenters persuaded us that waste code data were being used strategically or critically by emergency responders responding to accidents or by TSDFs determining the acceptability of wastes at their permitted facilities. Rather, we found the comments persuasive on the point that emergency responders rely far more heavily on the DOT hazard classification system and nomenclature when identifying appropriate response actions in emergencies. Likewise, the

TSDFs commented persuasively that they rely on the more detailed waste profile information that they develop to classify waste streams and the processes they use to manage wastes received under the manifest. Thus, we conclude that a risk-based ordering of waste codes is currently unnecessary as a risk communication tool for the revised manifest.

Instead, we have found that manifest waste code data primarily inform state agencies of materials generated within or brought into an authorized state for management. States use this information to monitor trends in waste management, levy assessments based on waste generation or management in the state, or prepare the RCRA biennial report. For over 20 years, waste handlers have been entering waste codes without the benefit of a hierarchy rule, and we are not aware that waste handler judgment in assigning codes has resulted in serious problems for authorized states. Therefore, we are accepting the comments submitted by both industry members and state agencies that the choice to enter waste codes should be left to the judgment of the users completing the form. The users should ascertain the waste codes that are most representative of the waste, giving due regard to the degree of the hazardous properties presented (*i.e.*, toxicity, reactivity, ignitability), the waste properties that are most material to the chosen management process, and the volume or relative quantity of the material associated with the waste code in question. We believe it is more practical to rely upon waste handler judgment, rather than develop a rigorous rule that presumes a precise toxicity-based ordering that is neither practical nor credible.

6. *Final Rule Determination—Waste Codes are Mandatory Fields.* In the May 2001 NPRM, we proposed to maintain RCRA waste codes as one of only two optional fields on the revised manifest. While EPA did not propose or solicit specific comment on designating RCRA waste codes as a mandatory data field, comments were submitted in response to our request for comment on additional ways to better integrate the collection of manifest data with the biennial reporting process. Commenters provided very strong and nearly unanimous comments urging EPA to designate waste codes as mandatory rather than optional. Commenters argued that designating waste code as reporting mandatory would be a burden reduction measure, since it would obviate the need to determine from state to state whether the codes were required. We were further advised by the comments that the benefits of a truly uniform manifest would outweigh any incidental burden arising from including RCRA waste codes on all manifests. State commenters tended to emphasize that waste code data were needed nationally in order to support RCRA reporting requirements. Industry and state commenters suggested that mandatory waste code reporting could help to integrate manifest data collection with the collection of RCRA Report data, streamlining the overall process. Finding these comments persuasive, we are imposing a mandatory requirement for users to report waste codes in Item 13 on all manifests in all states.

G.1. *Other Manifest Form Revisions—Introduction.* While the NPRM clearly focused on standardizing the form's data elements, it also discussed several other changes to terms and procedures affecting the manifest's use. Specifically, the NPRM discussed how the Subtitle C regulations define ''bulk'' containers for purposes of managing empty containers, and it addressed the use of fractions in reporting waste quantities on the manifest. In addition, the NPRM raised the issue of whether a TSDF initiating a new manifest for a rejected waste or container residue signs that manifest as an ''offeror'' of the rejected waste shipment, or, as the agent signing ''on behalf of'' the original generator. The ''offeror'' issue in fact has a much broader impact than the management and tracking of rejected wastes and residues, and in recognition of this broader impact, the final rule is revising the Generator's Certification statement on the form so that it will in the future be identified as the Generator's/Offeror's Certification. This preamble section explains our final rule positions for each of these areas.

2. *Definition of Bulk Container.* The May 2001 NPRM proposed to modify several current regulations that distinguish between bulk and non-bulk containers. Current regulations (40 CFR 261.7(b)(1)(iii) and § 262.32) make reference to containers that are either greater than, less than, or equal to 110 gallons in size. Section 261.7(b)(1)(iii) establishes criteria for determining if a hazardous waste container is ''empty,'' while § 262.32 requires a generator to mark containers of 110 gallons or less. In each case, the 110 gallon threshold was selected to conform to a 1982 DOT regulation that defined bulk packaging as packaging of 110 gallons or more. Thus, the current RCRA regulations established distinct ''empty'' container thresholds for bulk and non-bulk hazardous waste containers. However, DOT standards were revised in 1991 to harmonize them with international requirements, which distinguished bulk from non-bulk packagings at a threshold of 450 L or 119 gallons (*see* 55 FR 52471, December 21, 1990). To maintain conformity with DOT requirements, we proposed to revise the regulations so that they distinguish bulk from non-bulk containers at the 119 gallon threshold.

We received only a few comments that addressed this issue, but they supported the proposal to conform the bulk container threshold in the hazardous waste regulations with the current DOT requirements. Therefore, today's final rule amends § 261.7(b)(1)(iii)(A), § 261.7(b)(1)(iii)(B) and § 262.32 by substituting the 119 gallon threshold for the 110 gallon threshold that appears in the existing regulations.

3. *Use of Fractions.* In the May 2001 NPRM, EPA proposed new language for the manifest form instructions to clarify the Agency's position on including fractions or decimals in the waste quantities reported in Item 13 of the existing manifest. We proposed this language in response to reports from several states, which noted an increase in the number of manifests containing quantity descriptions with fractions. This can pose problems for state databases, which may not accommodate entries that include a fraction or a decimal. Therefore, several states urged EPA to adopt new regulatory language that more clearly would exclude fractions from the quantity descriptions reported on the form.

EPA has provided guidance on this issue in past manifest rulemakings. As we explained in the proposed rule preamble (see 66 FR 28250), EPA has historically discouraged the use of fractions or decimals. We stated in the March, 1984 Uniform Manifest Rule that quantity descriptions should be as accurate as possible without using fractions or decimals. However, EPA also is aware that a strict exclusion of fractional quantities could cause waste handlers to report waste quantities that lacked precision. For example, for waste quantities reported in tons, a waste quantity reported as 1.5 tons is far more precise than the alternative of truncating the quantity reported to only 1 ton or rounding up the quantity reported to 2 tons.

In order to address this problem, we proposed to revise the manifest instructions to require only whole numbers to describe non-bulk shipments, but allowing fractions to be used where necessary to describe bulk shipments. We received varying comments in response to this proposal.

Several state agencies provided strong comments discouraging any use of fractions in waste quantities, while one state advised that allowing fractions in bulk shipment descriptions should be extended to non-bulk shipments of acute hazardous wastes. The states opposed to reporting fractional quantities argued that state databases would have to be rewritten to accommodate fractions, and that we could avoid the precision issue by requiring smaller units of measure to describe bulk waste quantities. Industry commenters tended to be split between those that agreed that fractions should not be used on the manifest, and those that believed that generators should decide whether to use whole numbers or fractions. Some commenters raised the concern that prohibiting fractions would result in lower accuracy, although several industry commenters also advised that the accuracy issue would be resolved if smaller units of measure were used in the waste descriptions.

EPA agrees with commenters who pointed out that the issue is not the use of fractions *per se,* but rather quantity reporting precision. This data quality issue is not necessarily resolved by precluding the use of fractions or decimals. However, after considering all the comments, we believe that our earlier direction precluding the use of fractions or decimals remains the more sound guidance for the manifest. Many state databases are not set up to receive data reported as fractions or decimals; states reasonably may have relied upon EPA's earlier guidance recommending against fractions and decimals when they designed their data systems. Moreover, if waste quantities routinely included fractional or decimal entries, we believe that a significant number of errors could result from attempts to interpret the fractions or to determine when and where a decimal point was present. Given the use of carbonless and non-carbon papers to transmit data entries from the top copy of the manifest to lower copies, we do not believe that fractions or decimal points are likely to be transmitted through clearly to the lower copies in the package. The possible misinterpretation of these entries could further reduce the precision of waste quantity reporting on the manifest. Therefore, the manifest instructions included in today's final rule continue to state that waste quantities on the manifest are to be reported as accurately as possible without using fractions or decimals.

While we believe that fractions and decimals should not be entered on the manifest, we also believe that commenters raised a valid point that generators must give greater attention to the appropriateness of the units they select to report waste quantities. We agree with the numerous state and industry commenters who suggested that greater waste quantity reporting precision could be achieved if waste handlers exercised greater care when selecting the units. Bulk shipment quantities (those > 110 gals.) should be reported in units of gallons, liters, pounds, or kilograms. Larger units of measure (*e.g.,* tons, cubic yards, cubic meters) that do not allow for precision when quantities are expressed as whole numbers should not be used on the manifest, except to describe very large bulk quantities, such as the contents of a rail car, barge or tank truck.

However, additional care in the selection of quantity units alone will not resolve all the data quality issues that arise in connection with reporting waste quantity information on the manifest. In our discussions with the authorized states who consulted with EPA during development of this rule, we learned that there is another significant issue affecting the quality of waste quantity data reported on the manifest. According to several authorized states, a significant source of imprecision results from generators routinely reporting container capacities as quantities shipped, regardless of whether the container is in fact full when placed in transportation. In other words, some generators are reporting 55 gallons of waste shipped for every drum included in a shipment, even though the drums may only be partially filled. The same practice is allegedly used for reporting quantities shipped in larger bulk packages, presenting an even greater potential for waste quantities to be misrepresented on the manifest.

Since the manifest system was first announced by EPA in 1980, it has been assumed that generators and TSDFs understood their mutual responsibilities with respect to generators entering quantities shipped and TSDFs verifying the quantities (or reporting discrepancies) at the time of receipt. The manifest system was created to foster accountability for waste shipments among the generators, transporters and TSDFs. The manifest regulations have always required and continue to require generators to enter the actual quantities of wastes shipped and not merely the capacity of the containers selected for shipment. Likewise, the manifest regulations have always placed the responsibility and continue to place responsibility for verifying the actual quantities received on the designated facilities (TSDFs), who are required either to acknowledge that the quantities of wastes indicated as shipped were in fact received, or to report a discrepancy on the form if the quantities received do not match closely the generator's ''as shipped'' quantities. The underlying purpose of the manifest in ensuring accountability for off-site waste shipments is undermined if generators are not reporting quantities shipped accurately, and if TSDFs are overlooking these inaccuracies when they receive wastes at their facilities. In addition, any future efforts by EPA and the states to streamline the RCRA biennial reporting process by relying more heavily on manifest data will be frustrated if we conclude that waste quantities reported on the manifest are not a reliable source of information on quantities shipped or waste receipts.

EPA is therefore including additional language in the manifest instructions emphasizing the generators' responsibility to report quantities shipped and not simply container capacities. While EPA recognizes that some generators may not be in a position to measure quantities of wastes to a high level of precision, we believe that a good faith effort to estimate quantities shipped as accurately as possible represents a more acceptable standard or practice than simply reporting container capacities. We believe that it is a violation of the current manifest requirements for generators to report container capacities as the quantities shipped, when it is known that a container is not filled to capacity. The clarification in the revised form instructions should remove any doubts that may remain concerning the requirement that generators accurately report actual quantities shipped in Item 11. We will also look to TSDFs to comply with the requirement to report discrepancies on the form when generators fail to report quantities shipped accurately, since generators will likely improve their methods of measurement and the accuracy of their quantity entries when they realize that the receiving facilities are paying close attention to reconciling the quantities reported as shipped and received.

4. *Offerors and the Preparation of Hazardous Waste Shipments and Manifests.* The proposed rule would have added a new definition of ''preparer'' to the definitions in 40 CFR 260.10. While this new definition was proposed in the context of those using an electronic manifest, the purpose of the definition was to extend to the electronic manifest sufficient flexibility to enable the person performing the steps necessary to prepare a waste shipment for transportation to also

prepare and sign the electronic manifest on behalf of the generator. The discussion in the NPRM of the proposed ''preparer'' definition referred to the instructions for Item 16 of the current manifest paper form as a precedent for this flexibility in the paper context, since the Item 16 instruction allows signatures on the generator certification statement to be made ''on behalf of'' the generator. Thus, this aspect of the proposed rule raised an issue dealing with the activities of shipment preparers, their authority to initiate and sign the manifest for the generator, and their resulting responsibilities. Similarly, in the context of TSDFs rejecting waste shipments and preparing manifests to forward rejected waste to alternate facilities (or return the shipment to the generator), the NPRM raised the issue of the responsibility and liability of the rejecting TSDF when it initiates a new manifest and signs the generator's certification statement. For the latter issue, we proposed that the TSDF in such cases was signing the manifest in the capacity of an ''offeror'' of the shipment, but we asked for comment whether the TSDF forwarding a rejected waste under a new manifest should be viewed instead as signing the manifest as the agent of the generator. Today's final rule affirms that the TSDF rejecting waste and completing a new manifest to track the rejected waste to an alternate facility (or the generator site) signs the manifest in the capacity as offeror of the shipment, and not as an agent of the generator. Nor would the TSDF be functioning as a generator by intitiating such a manifest, although the NPRM would have had the facility sign the Generator's Certification statement. The specific issue of TSDFs rejecting wastes and their offeror responsibilities when they complete and sign new manifests is addressed in detail in section IV.B.3. of this preamble. However, because the offeror concept carries broader implications for hazardous waste shipments and waste handlers, and overlaps with the ''preparer'' concept that we proposed in the May, 2001 NPRM, we are including additional discussion here of the offeror status and how it impacts more generally those who prepare hazardous waste shipments and manifests for transportation.

The term ''offeror'' refers to a status that is well understood under the Hazardous Materials Regulations (HMRs) of the Department of Transportation (DOT). The HMRs apply to persons who transport hazardous materials in commerce, as well as to persons who offer hazardous materials for transportation. Since hazardous wastes are also hazardous materials within the scope of the HMRs, and since our RCRA statute requires us to regulate hazardous waste transportation-related activities consistent with DOT regulations, the requirements and policies adopted in the HMRs with respect to those who offer hazardous materials for transportation (''offerors'') apply to hazardous waste shipments and those who offer hazardous wastes in transportation. DOT consistently has interpreted the ''offeror'' status as connoting those persons involved with performing certain ''pre-transportation'' functions that must occur before hazardous materials are transported in commerce. Over the years, DOT has described the pre-transportation functions that may be performed by an ''offeror'' as including activities such as determining a material's hazard class, selecting a packaging, making and labeling a package, filling a hazardous materials package, preparing a hazardous materials shipping paper (including the hazardous waste manifest), providing emergency response information, and certifying that a hazardous material is in proper condition for transportation in conformance with the HMRs. The latter certification is in fact made when one signs the shipper's certification on a hazardous materials shipping paper, which occurs with respect to the hazardous waste manifest when one signs the Generator's Certification statement. DOT has issued interpretive letters and policy statements respecting offerors and their responsibilities when they perform the types of pre-transportation activities described above. However, these activities and responsibilities were further clarified by DOT when the Department codified these policies in a recent final regulation dealing with the applicability of the HMRs to loading, unloading, and storage. See 68 FR 61906 (October 30, 2003). In this rule, DOT codified a new regulatory definition of ''pre-transportation function,'' and listed the above-described activities and others as examples of theses functions that are specified in the HMR and ''required to assure the safe transportation of a hazardous material in commerce.'' See 49 CFR 171.8.

In the preamble discussion of the ''pre-transportation functions,'' DOT explains that a pre-transportation function is performed to prepare a hazardous material and its accompanying shipping documentation for transportation and is required to assure its safe transportation in commerce. 68 FR 61906 at 61909. The rule further explains that it does not matter if the pre-transportation function is performed by the shipper's (generator's) personnel or by the carrier's (transporter's) personnel. The HMR requirements apply to any person who performs or is responsible for performing the pre-transportation functions, and that person must perform the functions in accordance with the HMRs. See 68 FR at 61909–61911. Moreover, as to when compliance or non-compliance must be demonstrated, DOT has stated that it would generally expect an offeror to be able to demonstrate compliance with all applicable pre-transportation requirements at the time the hazardous material is staged for loading and the shipping paper is signed, as this is the offeror's certification that the material has been prepared properly for transportation in accordance with the HMRs. Id. at 61911–61912. At the same time, however, DOT has clarified that ''intermediaries'' who certify as the offeror assume responsibility only ''for all aspects of that shipment about which he knew or should have known.''

EPA is today clarifying that the issues concerning the activities of shipment ''preparers'' and the corresponding issues tied with the authority of a generator or other preparer to complete and sign the Generator's Certification statement on the manifest are governed by the same considerations discussed by DOT with respect to ''offerors'' and the performance of the pre-transportation functions described in 49 CFR 171.8. Since hazardous waste shipments and waste handlers are subject to the HMRs, and DOT recently has finalized a rulemaking under the HMRs which provides more clarity on these issues, EPA is deferring to these DOT requirements, rather than adopting its own definitions or differing interpretations based on the ''on behalf of'' language in the manifest instructions or on ''preparer'' signatures, etc.

Therefore, this final rule resolves the issues pending in this rulemaking relating to preparers signing manifests and TSDFs initiating new rejected waste manifests consistent with the DOT requirements in the HMRs pertaining to offerors and pre-transportation functions. Moreover, we have amended the Generator's Certification statement on the manifest form so that it will be described on the revised form as the Generator's/Offeror's Certification. This change more accurately represents the fact that the person signing the certification statement may in some instances be an offeror involved with

the preparation of the waste shipment (or of the manifest) for transportation, rather than the waste generator.

While the proposed rule discussed the offeror status while dealing with the issue of TSDFs rejecting and re-shipping wastes, we wish to emphasize that the offeror concept is broad enough to cover many waste shipment scenarios. Indeed, the offeror status and signature would be encountered most commonly in connection with the waste pick-up and transportation arrangements made between generators and waste transporters when the transporters service the generators' sites. Since the transporter's personnel frequently will aid generators in preparing their waste shipments for transportation (*e.g.,* selecting packages, labeling containers, filling and closing containers, selecting and affixing placards, completing the manifest or reviewing it for compliance with the HMRs and RCRA), the transporter performing such pre-transportation functions may be an offeror with respect to the shipment. While a generator may certainly sign the generator certification statement in its capacity as the generator, today's rule is intended to clarify that another person, such as a transporter making a waste pick-up and helping with the pre-transportation functions, may sign the certification statement on the manifest in their capacity as an offeror. This person may sign as an offeror if they have performed pre-transportation functions, and can certify that the shipment has been properly described, classified, packed, marked, and labeled, and is in all respects in proper condition for transportation under the applicable international or national regulations. The person preparing the shipment and making the certification is responsible for the proper discharge of the offeror functions they perform and the truth of the certification statement. The offeror is liable in its independent offeror capacity for discharging their offeror responsibilities, regardless of whether or not they may also be viewed as performing these activities ''on behalf of'' or the agent of the generator, as the generator's independent service contractor, or pursuant to a course of dealing with the generator.

Because we believe that the ''offeror'' approach and the new regulatory requirements in the HMRs concerning pre-transportation functions deal effectively with the issues we raised in the NPRM with respect to shipment preparers and manifest signatures, we are not finalizing the definition of ''preparer'' we proposed for inclusion in § 260.10. Nor are we expanding or otherwise modifying the meaning of the language in the Item 16 manifest form instruction enabling one to include the words ''on behalf of'' in connection with a signature, although it will now apply both to generator and offeror signatures. A preparer who assists with pre-transportation functions under the HMRs, and who can certify to the ''shipper's certification'' statements in the Generator's/Offeror's Certification, may sign this certification and initiate the manifest as an offeror. The ''on behalf of'' language is retained in the instruction to the signature item in order to effectuate the limited purpose for which this language was added in 1986, that is, to connote that generator (and now offeror) organizations typically act through their employees or agents, and that the employee/agent signatures bind the organizations they represent.

The term ''offeror'' thus connotes a status in hazardous materials management distinct from that of a shipper or generator. The offeror's responsibilities are limited to the proper discharge of the pre-transportation functions they perform or certify to being properly performed. While it is true that a generator may often elect to perform the pre-transportation functions, these represent only a subset of the full generator responsibilities set out in 40 CFR part 262. Likewise, when an entity other than a generator (*e.g.,* transporter or TSDF) performs pre-transportation functions as an offeror, it does not thereby assume full generator responsibilities. Rather, it assumes only the more limited responsibilities (for the pre-transportation functions) and the distinct liability that attaches to the offeror status. Therefore, a TSDF that only is offering hazardous waste in transportation after rejecting and staging the waste temporarily at its facility would be subject to the offeror responsibilities for the new movement of the waste, but it would not be subject to the full range of generator requirements. This issue is explained further in section IV.B.3. of this preamble.

H.1. *Delayed Compliance Date for Revised Form—Introduction.* When we proposed the manifest form revisions in May 2001, we were interested in according manifest users and authorized states adequate time to phase-in use of the new form. We realized that waste handlers and states would need some time to become familiar with the new requirements, entities with existing stocks of manifests would want to use up their supplies of the ''old forms,'' and new manifest printers would require time to register with EPA and prepare for printing and distributing the revised manifest. Likewise, state agencies would need sufficient time to amend their regulatory programs and adapt their databases to meet the new form requirements.

Cognizant of these factors, we proposed a ''delayed compliance date'' to allow time to transition to the new form. Under the proposed approach, the final rule would become effective six months after publication in the **Federal Register,** as is typically the case with RCRA regulations. However, for the first two years after the effective date of this final rule, we proposed that manifest users (*i.e.,* waste handlers) could choose which manifest form to use. They could use either the ''old'' manifest forms or the ''new'' manifest form established by this rulemaking. Those using the old manifest forms during the transition period would continue to record state tracking numbers and follow the instructions that accompany those forms. Anyone using the new form during the transition period would be required to comply with the form changes, instructions, and procedures applicable to the new form. At the conclusion of the proposed two year delayed compliance period, the revised form would be the only valid manifest that could be printed, distributed or used.

2. *Comment Analysis.* Commenters generally expressed support for the ''delayed compliance date'' or transition period approach. State agency commenters supported a phase-in period for the new form, but several cautioned that not every state would be able to make the necessary statutory and regulatory changes by the end of the proposed two-year period. However, several other state commenters claimed that two years was sufficient to implement the new form. In addition, state commenters also expressed concerns about their ability to adapt their tracking data bases to the new form requirements, and in particular, the confusion that would occur during the proposed two-year transition period if both the new form and old form were acceptable.

Industry commenters also supported the proposed transition period. However, their comments revealed a greater concern about the possible delay in achieving the benefits of manifest reform due to the transition period. While most industry commenters supported the two-year period, some desired to shorten the transition period to one year. These commenters argued this would ensure that the new form's benefits would be realized sooner in all states, and it would minimize problems associated with supporting dual

administrative systems. State and industry commenters shared the view that the proposed rule failed to clearly address the effect that authorized state program status would have on users' ability to implement the new form during the transition period. In particular, industry commenters urged EPA to clarify that waste handlers could begin to use the new form at any time during the transition period, regardless of whether the states had adopted the revised form requirements in their authorized programs. These commenters were concerned that the states could delay the new form's benefits beyond the two year transition period if they delayed adopting the new form.

3. *Delayed Compliance Date—Final Rule Approach.* After considering all the comments on this issue, we have decided to modify the transition approach from that which we proposed in May 2001. The comments that most influenced our decision were those suggesting that: (1) We should not extend the transition period or delay the realization of the new form's benefits for more than two years; (2) we should be sensitive to states' interests and allow the states a reasonable amount of time to adopt regulations and modify databases to accommodate the new form; (3) we should minimize or avoid any period of dual compliance with both the old and new manifest forms; and, (4) we should clarify more precisely when users may implement the new form.

In order to accommodate these key interests, today's final rule announces a delayed compliance period of 12 months for the new manifest form and its requirements. The delayed compliance period will begin on the effective date of the rule, which is September 6, 2005, and end 12 months later on September 5, 2006. The overall effect of the effective date and the delayed compliance period is that implementation of the revised manifest form and requirements will be delayed until September 5, 2006. We believe that this approach is much easier to implement than our proposed two year transition period. Since it is standard practice for EPA regulations to include a six month delayed effective date measured from the date of publication, today's final rule simply adds an additional 12 months of delayed compliance to allow users, state agencies, EPA and form printers to prepare to use the new form.

Therefore, prior to September 5, 2006, the existing manifest forms and requirements will continue to be implemented. Users and states will have a full 18 months to use up their stocks of existing manifests, and the states will be able to utilize this time to revise their regulatory requirements and adopt any necessary changes to their databases. Since only the existing forms will be accepted during this time, there should be no confusion about which form to use during the initial 18-month period after this final rule is published, nor any problems arising from dual implementation of the old and new forms. In addition, EPA will have adequate time to establish the manifest registry system, and registrants should have ample time to register with EPA and prepare to print and distribute the new form during the 18-month period.

After September 5, 2006, only the new manifest form and requirements established under today's final rule will be valid and acceptable for use. All shipments of hazardous waste initiated by generators or offerors on or after this date must be accompanied by the revised manifest form. Manifests initiated under the old forms and procedures by generators or offerors before this date may continue to accompany waste shipments that are already in transportation after the delayed compliance date for today's rule. By the end of the 18-month delayed compliance period, we expect that all necessary preparations for the use of the new form should be completed, so that no significant hardship should result from requiring the exclusive use of the revised form and requirements after this date.

4. *Delayed Compliance Date—Interaction with DOT Authority.* Since the promulgation of the Uniform Manifest by EPA and DOT in March 1984, the Agencies have emphasized that the RCRA manifest derives its implementation authority from both RCRA Subtitle C and DOT's Hazardous Materials (''Hazmat'') laws. The manifest's joint RCRA/Hazmat nature affects the implementation of the revised manifest announced in today's final rule, particularly with respect to implementation of the new form after the rule's delayed compliance date. Therefore, this section of the preamble explains the interaction with hazardous materials authority, since this interaction produces results that are not typical of other RCRA requirements based on non-HSWA authority (*i.e.*, statutory authority predating the Hazardous and Solid Waste Amendments of 1984).

For other RCRA Subtitle C regulations based on pre-HSWA authority, federal revisions such as today's rule do not take effect until the states adopt the new requirement under state law and receive authorization from EPA for the program revision. However, as we explained in the 1984 Uniform Manifest Rule, any changes that EPA and DOT adopt to the hazardous waste manifest may be made effective immediately on the effective date of the regulation, regardless of when states become authorized for the revisions to the manifest system. This result follows from the DOT's authority under the hazardous materials laws to regulate uniformly the requirements for the use and content of shipping papers. As we said in the 1984 rule, ''* * * These DOT amendments operate independently of RCRA requirements and will be applicable in all states, regardless of their authorization status'' (55 FR 10490 at 10492 (March 20, 1984)). However, unlike the 1984 Rule, today's Manifest Form Revisions Rule includes an additional 12 months of delayed compliance measured from the effective date of the rule. EPA and DOT agree that there are sound reasons for this delayed compliance period, which has the effect of delaying the actual implementation of the new form until September 5, 2006. Thus, today's final rule will not be implemented immediately on the rule's effective date. Rather, on the delayed compliance date of September 5, 2006, today's final rule and the new manifest form will be implemented under DOT's authority to regulate these matters uniformly, regardless of RCRA state authorization status. Indeed, when today's final rule is in fact implemented on September 5, 2006, DOT will have the express statutory authority to preempt any state and local requirements that are not ''substantively the same'' as the federal manifest requirements announced in today's rule. This results from the inclusion of the preparation, execution and use of shipping documents among the so-called ''covered subjects'' within the express preemption provisions of the Hazmat statute and regulations. See 49 U.S.C. 5125(b)(1), 49 CFR 107.202(a)(3).

Therefore, after the delayed compliance date for today's rule, only the revised or new manifest requirements will remain valid. Federal and state officials may enforce the new manifest requirements under the authority of the federal hazardous materials transportation laws. They may also enforce the new manifest under the state law authorities of the RCRA authorized states at such time as the states adopt the new form requirements and obtain authorization for them from EPA. However, it must be emphasized that on the delayed compliance date, the new manifest requirements will become applicable uniformly in all states under

the authority of the hazardous materials transportation laws, regardless of state authorization status. While the new manifest requirements will also take effect as RCRA requirements once the authorized states obtain authorization for their program revisions adopting the new form, the new form and requirements will be applicable in all authorized states under hazardous materials authority in the interim period between the delayed compliance date and the date the states' program revisions are authorized by EPA.

III. Manifest Form Acquisition and Registry

A.1. *Manifest Form Acquisition—Introduction.* The May 2001 NPRM discussed 40 CFR 262.21 (*i.e.*, acquisition hierarchy), which requires generators to look first to the consignment state's manifest requirements (*i.e.*, the state in which the hazardous waste shipment will be transported and subsequently managed). If that state supplies a manifest and requires its use, the generator is required to use that state's manifest for the waste shipment. If, however, the consignment state does not supply a manifest, but the generator's state supplies one and requires its use, then the generator must use the manifest required by its state. If neither the consignment state nor generator state supplies a manifest, the generator can obtain the manifest from any source. In addition, 40 CFR 271.10 requires states to follow the federal format for EPA Manifest form 8700–22, and, if necessary, EPA Form 8700–22A but allows states the option to supplement the federal manifest format, to a limited extent, provided that their manifest complies with the consistency requirements of the Hazardous Materials Transportation Act (49 U.S.C. 1801 *et seq.*). Thus, states are able to print and distribute their own manifests and are afforded some discretion to include state-specific instructions for optional fields, minor formatting variations and variations for copy submission schemes. In May 2001, EPA proposed revisions to these manifest acquisition regulations, limiting the types of information that state agencies could require on the new form.

The following sections discuss the proposed changes to the manifest acquisition system, Registry, printing specifications, copy submissions, and the regulatory changes to 40 CFR 262.21 resulting from today's rule.

2. *Proposed Manifest Acquisition Provisions.* EPA proposed to remove the manifest hierarchy acquisition system and replace it with a standardized acquisition approach. We also proposed to establish a new operational function, called the ''Registry,'' in which we would provide minimal oversight to ensure that the new forms are printed properly. According to the proposed acquisition approach, state agencies could no longer require generators to use their state's manifest, and users could obtain the manifest from a number of sources. State agencies could print the new form, but would have to register with EPA first. Similarly, the new acquisition system would allow waste handlers (generators, transporters and TSDFs) and commercial business form printers to print the form, but they, too, would be required to register with the Agency before doing so. Thus, state agencies, generators and other waste handlers that need the form could register with EPA to print the form themselves or they could obtain manifests from other registered sources.

In general, industry commenters supported the proposed manifest acquisition approach, indicating that it would reduce the administrative burden on certain waste handlers, particularly those who conduct business in multiple states that require use of their state manifest. State agency's comments on the proposed changes to the manifest acquisition system varied. State commenters who supported the proposed changes also suggested that we post certain state-specific information such as state waste codes, state mailing address and state copy submission requirements on an EPA hosted Web site. State commenters who criticized the new manifest acquisition approach did so for several reasons.

First, the proposed approach would remove states' ability to control exclusively the manifest production and distribution system. According to these commenters, the proposed changes would economically disadvantage those states that currently sell blank forms because they will lose the revenue they currently collect from selling manifests.[2]

Following discussions with most of the states that collect fees for selling blank forms, EPA has learned that these states generally use the revenues from selling blank manifests only to recoup their printing costs, and not to fund other components of their waste programs. Some states also have collected fees to offset the costs of processing collected manifest forms (*e.g.*, entering data into tracking databases), and in a few cases, the revenues collected from selling blank forms have been used to offset these processing costs as well as the printing costs. However, in our discussions with the states on manifest form fees, we found that several states no longer collect their processing fee as part of the sale price of the blank forms, but as a distinct charge divorced from the sale of the forms. Other states which collect these fees and consulted with us on the development of this rule also have indicated that they will in the future collect their processing fees by a means not tied to the sale of blank forms. Since most states only are recovering their printing costs when they sell manifests, and the states charging processing fees also have identified other means not tied to selling forms for recovering their processing costs, we do not believe that the proposed acquisition approach for the revised manifest would impact significantly these state program revenues.

The states with manifest tracking programs typically use their manifest data to assess additional waste management fees tied to the amount of waste being generated or managed in the states. The proposed acquisition approach would not impair states' ability to assess and collect these waste management fees, and we are encouraging the use of additional state waste codes as a means to flag state-specific requirements that would have significance to collecting such fees. Thus, if there are limited instances where a state is using revenues from selling blank manifests for other waste program purposes beyond offsetting form printing costs or processing costs, we believe that any reduction in such revenue tied to the proposed acquisition approach could be recouped by adjustments to the waste management fees. After considering these comments and the information we learned from discussing the revenue issue with additional states, we do not believe that the revenue issue raised by commenters is sufficient enough to warrant abandoning or altering the proposed acquisition approach.

As a second key concern, several state commenters argued that the new manifest acquisition approach would result in less net burden reduction than the proposal suggested. These commenters suggested that the proposed acquisition approach provides neither the time and burden savings nor the decreased complexity that we claimed

[2] Public data sources we reviewed in 2003 indicate that 12 state governments (AR, CA, CT, DE, IL, LA, MD, MI, MO, NH, NJ, PA) may collect revenues from direct assessment of fees during distribution of state-printed RCRA manifests, totaling an estimated $1.16 to $2.44 million per year (see ''Economics Background Document'' for basis of this estimate). However, as of 2004, we estimate there may only be seven states collecting manifest printing and distribution fees.

would result to the regulated community. They noted that the proposed approach would continue to require generators to contact all states in which they conducted business to obtain information on individual state requirements (*e.g.*, information on requirements for generator form submission to generator state, waste codes, etc.). Finally, some state commenters argued that the proposed changes are in fact more confusing because they prohibit the inclusion of state-specific information and instructions on the form. One commenter stated that eliminating the state's ability to print complete directions on the back of the manifest would increase burden on a large percentage of waste handlers who would need to maintain a separate filing system for state directions.

3. *Final Manifest Acquisition Provisions.* The final rule substantively retains the proposed manifest acquisition and Registry regulations at § 262.21. Under the final § 262.21 manifest acquisition requirements, a waste generator, transporter or TSDF can register with EPA to print its own manifests, or it could obtain manifests from other registered sources such as states, commercial printers or other waste handlers. The final manifest acquisition requirements do not allow states to require generators to use their state form.

The Agency recognizes that although today's action standardizes the manifest acquisition provisions, generators must still be cognizant of state-specific information, such as state waste code and generator manifest copy submission instructions. Generators will be able to determine this state-specific information from a variety of sources, such as Web sites, state regulations and other published materials, or contacts with State agency staff. We, however, do not agree with commenters' argument that waste handlers will need to maintain a separate filing system for state directions. The Agency notes that it had proposed to eliminate all but two optional fields (*i.e.*, Waste Codes and Handling Codes, previously Items I and K, respectively) from the form and has since made these two blocks mandatory with today's action. (*See* sections II.E.4 and II.F.6 for further discussion on management method codes and waste codes, respectively.)

Further, in response to commenters' suggestions to provide additional support to industry under the revised manifest procedures, EPA is planning to design a Web site to: (1) Assist registrants to prepare their applications; (2) provide a means for both printers and the public to communicate with the Registry; and, (3) assist waste handlers in completing their manifests to accompany hazardous waste shipments. In addition, we would post the following guidance documents (once they are finalized) at the EPA Web site:

- Registration instructions that will lay out the specific requirements/components of the application package, along with examples of what EPA expects to see (*e.g.,* examples of quality control procedures for tracking numbers, definition of terms, etc) and a Q&A document of frequently asked questions.
- A guidance document that sets forth print specifications that registrants may use in preparing manifest samples for Registry evaluation.
- An up-to-date list of all approved registrants, contact information, and approved numbering schemes. The list would allow: (i) Prospective registrants to develop and propose unique suffixes; (ii) states to learn which entities are printing manifests in their state; and, (iii) the public to contact registrants for forms; and
- Information and/or links to assist waste handlers in completing the manifest, including the manifest instructions, a description of the delayed compliance date, and related matters, applicable state requirements (*e.g.*, state manifest copy submission requirements, contacts, waste codes), federal waste codes and Hazardous Waste Report Management Method codes.

With regard to the state manifest programs' potential loss of revenue, we understand these concerns, but as we explained above, after a more thorough consideration of this issue, we believe that the revenue losses that will result from the new acquisition approach will either be insignificant or can be avoided by the states as they plan for the implementation of the revised form.

B.1. *Proposed Manifest Registry and Printing Specifications—Introduction.* We proposed a Registry system that described procedural mechanisms and offered federal printing specifications to ensure that printers used unique tracking numbers on each manifest, and to reduce the possibility of printing many variations of manifest forms. The manifest tracking number would be a unique pre-printed 11-digit number (*i.e.*, the applicant's proposed unique three-letter prefix followed by eight numeric digits). EPA proposed to prohibit people from assigning manifest tracking numbers and distributing the form without submitting an application to EPA and receiving approval of their manifest tracking number system. In general, the proposed regulations required the following administrative procedures and printing specifications:

- Applicants must register with EPA to obtain manifest tracking number system approval and to ensure that they adhere to federal printing specifications and procedures. Prospective registrants must submit their company's profile information (*e.g.*, company name, address, EPA Identification number, mailing address, etc.), their proposed, unique three-letter prefix and a detailed description of their numbering system (*i.e.*, creating and assigning of 11-digit alphanumeric manifest tracking numbers to manifests);
- Applicants must submit a manifest proof;
- Applicants must sign a certification to ensure tracking numbers will not be duplicated intentionally and, if applicable, will adhere to all printing specifications;
- The form must be printed in the same format as EPA Form 8700–22 and 22A, according to the federal printing specifications at 40 CFR 262.21(b);
- Manifest tracking number must be assigned in accordance with a numbering system approved by EPA and must be pre-printed on the form;
- Applicants cannot add additional boxes on the form;
- Applicants cannot delete existing boxes on the form;
- Applicants must print the form with manifest dimensions of 8½ by 11 inches;
- Applicants must print the form in black ink so that it can be photocopied or faxed;
- Applicants must print the standardized manifest instructions, provided in the appendix to Part 262, on the back of the manifest; and,
- Applicants must print the form as a six-copy form and must indicate on the form that copies of the form are distributed as follows:

Page 1 (top copy): ''Designated facility to consignment state'' (if required);

Page 2: ''Designated facility to generator state'' (if required);

Page 3: ''Designated facility to generator'';

Page 4: ''Designated facility copy'';

Page 5: ''Transporter copy''; and,

Page 6 (bottom copy): ''Generator's initial copy.''

In the proposal, we stated that generators should provide a photocopy of the manifest if their state requires it. The proposal also noted that a completed manifest may contain fewer pages if the state does not require submission of forms; however, printers are required to print six-copy forms. Under certain circumstances (*e.g.*,

exports, imports, additional transporters, exception reporting, and/or states requiring additional copies), more than six copies of a manifest may be necessary. In these cases, the generator or transporter must photocopy the most legible copy of the form available to ensure that the extra manifest copies are legible.

In general, industry commenters supported the Registry process, but indicated that EPA should provide greater detail on the Registry and the tracking number system than we provided in the proposal. Commenters also requested that information be provided to the regulated community so that they can be assured that prospective form registrants are granted authorization by EPA to print and distribute manifests forms. One industry comment suggested that EPA provide more information in areas such as: procedures for registering and applying for the unique numbers; information on how to contact the Registry; the mechanism for obtaining manifest numbers; and a verification process by which the public can confirm that waste handlers are authorized to use their assigned numbers, etc. Another commenter recommended that EPA develop a registration application form for the manifest and make it available to waste handlers and states. Industry commenters also suggested that EPA conduct the Registry electronically and by mail so that waste handlers and states could register and obtain unique numbers via the internet.

State comments on the proposed Registry and manifest tracking number system varied. Some state commenters favored the proposed Registry provided that EPA implements procedures which ensure the printing of non-duplicate numbers. A few of these commenters also suggested that EPA post a Registry of printers on the EPA Web site so that they and others could have links to the Web site and could access manifest information easily. Other state commenters supporting the proposed Registry suggested that EPA assign blocks of numbers to entities and make information regarding tracking number assignment for printers available to states. One commenter suggested that EPA should ensure its numbering scheme does not duplicate states' current numbering conventions. However, several state commenters expressed concern that delegating printing responsibility to industry would lead to a hodgepodge of different tracking schemes or other difficulties. Some of these commenters suggested that states control the distribution of blocks of tracking numbers.

We understand that the states want assurance that approved registrants will pre-print a unique tracking number on each manifest. However, EPA does not believe that it or state agencies must have strict control assigning and distributing tracking numbers. We believe our involvement is necessary to some extent, but only should be operational in nature. In other words, we will implement policies and procedures needed to run the Registry, provide the necessary guidance and/or detailed specification for designing the manifest, and set forth procedures for approving or denying form printers' applications.

Commenters also provided suggestions for the form printing specifications. Several commenters suggested that EPA: Include hash marks in Item 14; prohibit the use of corporate logos, advertising or other information not explicitly allowed in the rule; eliminate shading on the form; use a black border to designate sections of the manifest; ensure minimum quality of paper; and, ensure readability of instructions on the back of the manifest. EPA researched state manifests and consulted five commercial printers and four states to identify additional specifications that the Agency should require in today's rule or in guidance. Although EPA generally agrees with the commenters' suggestions, we also recognize, based on our research, that certain printing specifications should be left to the discretion of printers. For these reasons, the final rule leaves a considerable amount of discretion to the registrant in designing its manifest. Refer to section III.B.3 of this preamble for a discussion of the final print specifications.

2 *Final Manifest Registry.* The registration approach being finalized today under § 262.21(a) through (e) reflects our desire to fully evaluate the ability of the registrant to tightly control the use of its tracking numbers and to print an acceptable manifest. In many respects, our final Registry approach resembles the proposed approach. However, we have expanded the proposed approach, keeping commenters' concerns and suggestions in mind. Most notably, the final approach requires a registrant to submit two separate application components to the Agency. This differs from the proposed approach, under which registrants would have submitted a single application to the Agency. EPA revised the proposed approach because we determined that the Agency would not have received enough information in one application submission to effectively evaluate the registrant's printing capabilities. In particular, the Agency would not have received a proof of the manifest for which approval is requested. Because the print specifications being published today leave considerable discretion to the registrant to design its manifest, the Agency believes it is essential that we evaluate and approve samples of the registrant's forms before they are used or sold. Hence, the final Registry approach requires the registrant to submit a fuller description of its printing operations and several samples of its manifest.

Although some commenters favored EPA developing a Registry application form, we have chosen not to do so. We believe that discussions given in today's final rule detailing the application process, supplemented by posting Registry information on the EPA Web site, are prescriptive enough for registrants to provide sufficient information. We also do not anticipate receiving a substantial number of applications. Because on these factors, we do not believe an application form is warranted.

Section 262.21(a)(1) provides that the registrant may not print, or have printed, the manifest for use or distribution unless it has received approval by EPA to do so under § 262.21(c) and (e). Section 262.21(a)(2) provides that the registrant is responsible for ensuring that the organizations identified in its application are in compliance with the approved application and the requirements of § 262.21.

Because the § 262.21(a) provisions hold the registrant directly accountable for compliance, we fully expect the registrant to use whatever mechanisms are available to ensure that the organizations and companies in its application also comply with the requirements. This could include, for example, the use of organizational controls (*e.g.*, clear lines of communication, accountability and oversight) and production-related controls (*e.g.*, the use of quality management systems in the printing process). It also could include the use of contract terms and conditions that encourage strong performance by contracted firms.

In addition, § 262.21(a)(2) provides that the registrant is the only entity that can assign manifest tracking numbers to its manifests, except that the registrant can delegate this activity. We believe this provision is needed to ensure tight control and accountability over its numbers. One of our highest priorities under the Registry is ensuring that each manifest used or distributed (*e.g.*, sold to the public) has a unique manifest

tracking number. Because approved registrants will be able to assign and pre-print tracking numbers onto manifests without any direct Agency oversight, we believe it is critical that the registrant be held accountable for ensuring that each manifest has a unique tracking number.

To become registered, a registrant must submit an initial application to the EPA under § 262.21(b). The application must provide basic information on the registrant's organization (*e.g.*, contact information). The application also must include a description of the scope of the operations that the registrant plans to undertake in printing, distributing and using its manifests. The registrant must describe whether it intends to print its manifests in-house or through a separate (*i.e.*, unaffiliated) printing company pursuant to contract.

In this regard, EPA recognizes that registrants will likely propose various ways to print the manifest. We expect that some registrants will be waste handler companies or forms brokers that do not have in-house printing capabilities. These companies may contract with a separate printing company to print their manifests. Other registrants might be commercial printers that may either print the forms themselves or outsource the print job to a subcontractor. Finally, there may be state agencies that will register to print the manifest, but contract with a commercial printer for these services.

If the registrant intends to use a separate printing company to print the manifest on its behalf, the application must identify this printing company. The application must discuss how the registrant will oversee the company to ensure compliance with all applicable requirements. If this includes the use of intermediaries (*e.g.*, prime and subcontractor relationships), the role of each must be discussed.

As mentioned earlier, one of our highest priorities is ensuring that each manifest used or distributed to the public has a unique manifest tracking number. To this end, the application must describe how the registrant will ensure that a unique manifest tracking number will be pre-printed on each manifest. The application must discuss the internal control procedures to be followed by the registrant and unaffiliated companies to ensure that numbers are tightly controlled and remain unique. In particular, the application must describe how the registrant will assign manifest tracking numbers to its manifests. If computer systems or other infrastructure will be used to maintain, track, or assign numbers, these should be indicated. The application also must indicate how the printer will print a unique number on each form (*e.g.*, crash or press numbering).

The rule does not specify how much information the registrant should provide in describing its processes and procedures for assigning and controlling numbers. This is left to the registrant's discretion. For registrants that propose a relatively simple printing arrangement (*e.g.*, a registrant that will assign tracking numbers directly to an in-house printer), the description may be relatively straightforward. Other organizations may propose more complex arrangements, *e.g.*, a waste handler corporation that will delegate tracking numbers to multiple different facilities within the corporation. In this case, the registrant will need to indicate how the numbers will remain unique across facilities. In those cases where a registrant will rely on a commercial printer to print their manifests, the registrant should explain the control processes that it and the commercial printer will follow to ensure that the registrant's tracking numbers will be unique and not confused with the tracking numbers of any other registrant who may contract with the same printer for its manifest printing jobs. In the end, each registrant will need to use its discretion to determine the amount of information necessary to demonstrate that tracking numbers will remain unique, given its particular printing arrangements and the complexity of its operations.

The application also must describe the other quality procedures to be followed by each establishment and printing company to ensure that all required print specifications are consistently achieved and that printing violations are identified and corrected at the earliest practicable time. Finally, the application must indicate how the registrant intends to use the manifests (*e.g.*, whether it intends to use them for its own hazardous waste operations, sell them, or otherwise make them available to generators).

Under § 262.21(b)(6), the registrant must describe the qualifications of the company that will print its manifest. A registrant that intends to print the manifest in-house (*i.e.*, using its own establishments) must describe the qualifications of these establishments to print the manifest. Registrants that intend to use a separate printing company must describe the qualifications of this company. The registrant may use readily available information to do so (*e.g.*, corporate brochures, product samples, customer references, Web site address), so long as such information pertains to the establishments or company being proposed.

The registrant also must propose a unique, three-letter suffix to be used in pre-printing a unique manifest tracking number on each manifest. EPA evaluated several different schemes before selecting a three-letter suffix. EPA decided to require a suffix because of its concern about duplicating manifest tracking numbers previously used by the states on their forms. States' manifest tracking numbers normally begin with a two- or three-letter prefix, followed by six or seven digits. Under the tracking number scheme being finalized today, each registrant's pre-printed number must consist of nine digits followed by its unique suffix. As mentioned earlier, EPA is planning to design a Web site, and would include a table that identifies all suffixes that have been approved. A prospective registrant would need to consult the Web site to determine which suffixes have not been approved and are therefore available. The registrant can propose any available suffix. EPA expects that most approved registrants will burn their suffix directly onto a printing plate. Each manifest can then be numbered sequentially as it passes through the printing process.

A duly authorized employee of the registrant must sign its application to certify that the organizations and companies in its application will comply with the procedures of the application and requirements of § 262.21 and that it will notify EPA of any duplicated manifest tracking numbers on manifests that have been used or distributed as soon as this becomes known. EPA believes this certification is important to emphasize to the registrant the importance of ensuring that its printing operations produce consistently high quality manifests, that tracking numbers be tightly controlled, and that print violations be corrected promptly.

Under § 262.21(c), EPA will either approve the application or request additional information or modification before approval. Once it is approved, EPA will email the registrant an electronic file of the manifest, continuation sheet, and manifest instructions and ask it to submit three fully assembled manifests that meet all of the specifications at Section 262.21(f). The registrant also must describe its manifest's paper type, paper weight, ink color of the manifest's instructions, and binding method (See § 262.21(d)). If screening of the ink was used for the manifest's instructions, the registrant must indicate the extent of the screening. The registrant need not

submit samples of its continuation sheet, so long as the continuation sheet will be printed using the same paper type, paper weight, ink color of the instructions, and binding method of the manifest form.

After EPA receives the form samples, we will evaluate them to determine if the specifications of § 262.21(f) have been met (*See* § 262.21(e)). For example, we will evaluate them to determine whether they have acceptable copy-to-copy registration, imprints appear legibly on all copies, and the ink of the manifest's instructions does not bleed through the front of the copies.

If the manifests pass these tests, EPA will approve the registrant to print, distribute and use the manifest as desired. The registrant may not use or distribute its forms until EPA approves them. EPA anticipates the evaluation of the sample forms and their subsequent approval will take forty-five days. However, this process conceivably could extend beyond the default forty-five day time frame if unforseen circumstances arise, or we determine that the registrant's forms are unacceptable. If EPA finds the forms unacceptable, we will request additional information or modification before approving or denying them. An approved registrant must print its manifest and continuation sheet according to its application approved under § 262.21(c) and the print specifications at § 262.21(f). The forms also must be printed according to the paper type, paper weight, ink color of the instructions, and binding method of the approved form sample.

For the registration process to be successful and attractive to registrants and printers, we understand that we must provide adequate support to maximize the likelihood that their manifests will pass EPA's tests on the first try. EPA recognizes that most printers will run a small test batch of forms to produce the form samples for EPA review, and thus, they will incur some production costs. EPA is keenly interested in ensuring that registrants develop an approvable manifest on the first try so they do not incur any added expense of redesigning their forms based on EPA's comments on the original samples. To this end, EPA will provide an electronic file of the manifest, continuation sheet, and manifest instructions to registrants, which will relieve them of the need to completely typeset their forms. Using EPA's electronic file should ensure that their forms have exact registration to EPA's forms and do not contain any typographical errors.

In addition, EPA is planning to post manifest print guidance on its Web site. The guidance will set forth examples of manifest specifications that we have found to be acceptable under our tests (*e.g.*, acceptable paper weights, ink colors for the instructions). Registrants need not follow these recommendations, as there are many other combinations of specifications that will be acceptable. However, the registrant might increase its likelihood of being approved if it considers the guidance in designing its forms. The guidance also will describe how we will perform our tests of the form samples under § 262.21(e) and will discuss the timeframe needed to review and approve registrants to print and distribute their manifest forms. While the registrant is not required to conduct such tests, they can increase its likelihood of approval by performing such tests on its forms before submitting them to the Registry. By setting forth print guidance and explaining our tests, we believe we are creating a transparent process in which the registrant fully understands how it is being evaluated and how it can develop an approvable manifest.

Although many commercial printers agree with our requirement under § 262.21(d) for registrants to submit form samples that meet the print specifications of § 262.21(f), we note that some commercial printers have expressed concern about it. They argue that three form samples will not provide us with much useful information on a registrant's ability to consistently print forms to our satisfaction. This is because each print job can vary (*e.g.*, brightness of the paper and the expertise of the print supervisor on shift can vary). Instead, some commercial printers have suggested that we require each registrant to typeset the form (*i.e.*, prepare it from scratch in a computer program), submit a proof on bond paper that shows the format and appearance of the form, and indicate the paper type, binding method, and other specifications they intend to use. Because these commenters believe that printing the manifest is relatively straightforward, such a submittal should be all we need to approve the registrant and be confident that it will produce adequate forms. They indicate that this approach also will be less expensive than requiring form samples that meet the § 262.21(f) specifications.

We disagree with these printers in several respects. First, we acknowledge the several limitations of evaluating a multi-part form sample. However, we believe the requirement for form samples provides critical information on the registrant. Form samples demonstrate the competence of the registrant to print the form to our satisfaction under the § 262.21(f) specifications. For many commercial printers, this will be straightforward. States have relied on commercial printers for years to print their forms, and these printers have developed an institutional knowledge and methods for ensuring appropriate binding, ink color for the instructions, and other aspects.

We expect, however, that certain prospective registrants will be completely new to multi-part forms printing and may not have the necessary knowledge and capabilities. For example, certain hazardous waste handlers may want to print their own forms, but lack prior experience in forms printing. If the Registry required only that the registrant typeset the form, print it on bond paper, indicate the type of paper and other specifications, and submit these materials with its application, anyone with a personal computer could register, including persons with no demonstrable capability to print the forms with consistent quality on a large scale.

Although we do not want to discourage legitimate organizations from registering, we must ensure that each registrant is competent to print the form. Because the Registry will be open to everyone, we feel an obligation to the states and waste handlers—those who will use the forms—to separate legitimate registrants from the others. In effect, a registrant who submits form samples meeting the § 262.21(f) specifications will be demonstrating its competence under the Registry.

In addition, we believe form samples will be necessary for us to determine if the registrant's forms meet the § 262.21(f) specifications. Although we plan to provide guidance on our Web site on acceptable or approved specifications (*e.g.*, paper weight, etc.), we fully expect that a number of registrants will submit forms samples whose specifications are unfamiliar to us. In such situations, we may not be certain that the proposed forms will be adequate. Even if the registrant also provides us with samples of the blank paper it intends to use (*e.g.*, so we could write on them to test legibility), we could not be sure that the forms would be fully compliant with the § 262.21(f) specifications. For example, we could not be sure of the extent to which the registrant's proposed ink color of the instructions might bleed through the front of the copies when photocopied, scanned, or faxed. We also may not be certain whether a registrant's proposed binding method will ensure that copies

do not become inadvertently detached during normal use of the form. There are different ways to bind copies together, some of which may not be effective. The only way for us to evaluate these aspects of the form confidently and fairly is for the registrant to submit form samples. Because of these reasons, the final rule includes the requirement for registrants to submit to the Registry three form samples that meet the § 262.21(f) specifications.

Under Section § 262.21(g), a generator or other waste handler may obtain its manifests from any registered source (*e.g.*, a state agency, commercial printer, or other waste handler). In completing its manifest, the generator also must determine whether the generator state or the consignment state for a shipment regulates any additional wastes (beyond those regulated Federally) as hazardous wastes under these states' authorized programs. Generators also must determine whether the consignment state or generator state requires the generator to submit any copies of the manifest to these states. In cases where the generator must supply copies to either the generator's state or the consignment state, the generator is responsible for supplying legible photocopies of the manifest to these states. As mentioned above, EPA intends to post or provide links to state-specific information on its Web site regarding copy distribution and state waste codes. Although this information is meant to assist waste handlers in completing their forms, they should note that there may be other sources of this information, and that it is the responsibility of the waste handlers to determine what state-specific information is required on their manifests.

Subsequent to its approval to print the manifest, a registrant may want to update or change its application approved under § 262.21(c) or its manifest or continuation sheet approved under 262.21(e). To this end, § 262.21(h) establishes procedures for updating or changing the approved application and form. Section 262.21(h)(1) provides that an approved registrant may update the information in the application approved under § 262.21(c) by revising and submitting it to EPA, along with an indication or explanation of the change. EPA does not expect that registrants will often make changes to the substantive portions of its application (*e.g.*, quality control procedures under § 262.21(b)(5)). Rather, EPA expects registrants will simply update certain pieces of information as necessary (*e.g.*, company name or phone number). EPA either will approve or deny any substantive revisions. If EPA denies a substantive revision, it will explain the reasons for the denial and request that the registrant modify its proposed substantive changes before EPA will consider issuing an approval.

Under § 262.21(h)(2), a registrant may request a new manifest tracking number suffix (*e.g.*, if it needs additional numbering capacity). The registrant must propose a new unique suffix, along with the reason for requesting it. EPA will either approve the suffix or deny the suffix and provide an explanation for the denial. EPA expects that a denial would be rare, since our Web site will identify suffixes that are already approved and therefore unavailable.

Section 262.21(h)(3) addresses changes to an approved registrant's manifest forms, continuation sheets, or manifest printing company. As provided in § 262.21(e), an approved registrant must print the manifest according to its application approved under § 262.21(c) and the manifest specifications in § 262.21(f). It also must print the manifest according to the paper type, paper weight, ink color of manifest instructions and binding method of its approved form. Section 262.21(h)(3) provides that, if an approved registrant would like to change its approved manifest or continuation sheet in regard to paper type, paper weight, ink color of manifest instructions, or binding method, it must submit revised samples to the Agency for review and approval. The registrant cannot use or distribute its revised forms until EPA approves them. The registrant must address the Agency's comments or questions before the revised forms can be used or distributed. In the meantime, the registrant can continue to use the forms for which it was originally approved.

We recognize that this approach may, at first glance, seem overly burdensome to some registrants. In speaking with commercial printers, we found some of them supportive of the requirement for form samples and others opposed to it. Printers opposed to the requirement expressed concern that submitting a form sample each time a registrant changes the specifications will be burdensome and delay its customers' print jobs. They also were concerned about the uncertainty associated with EPA review of forms that have already been printed and are ready for shipment to the customer.

As an initial point, EPA does not agree with the commercial printers that the requirements at 262.21(h)(3) are overly burdensome. EPA is allowing the registrant to run its print job as usual and requesting only that the registrant provide a few samples of the revised forms in the mail. If the registrant takes care in redesigning its manifest (*e.g.*, referring to EPA print guidance and testing its revised manifest before submittal to the Registry), the registrant should fully expect its revised forms to be approved.

Beyond this, EPA expects that most registrants will be forward-looking in their approach to printing the manifest. They will determine what their desired paper type, paper weight and other specifications are when they initially register, so that they will be comfortable with them under their approved registration. If a printing company seeking to register with EPA has two types of paper in its inventory, it may decide to submit two sets of samples to the Registry, to get approval for both paper types. A printing company also might want to get approved for two paper types so it has the flexibility to use one paper type or the other in the event that one paper type is discontinued by the manufacturer or goes up in price. There is nothing in the regulations to prevent a registrant from submitting multiple sets of samples under § 262.21(d). Further, EPA expects that some approved registrants will submit samples of their revised forms to the Registry in advance of their receiving customer orders for them. Obtaining EPA's approval of the revised forms in advance of customer requests will obviate any potential delay in printing the customer's order.

Section 262.21(h)(3) also requires a registrant to submit new manifest samples, along with the printer's qualifications to print multi-part forms, if it would like for a new company to print the manifest. For many of the same reasons explained above, the Agency understands that printers vary in their competence to print the forms. EPA believes it is essential to evaluate all companies that will print the manifest by reviewing its forms and print qualifications.

As provided by § 262.21(i), if, subsequent to its approval under § 262.21(e), a registrant typesets its manifest and continuation sheet instead of using the electronic file of the form provided by EPA, it must submit a sample of the manifest and continuation sheet to the Registry for approval. EPA recognizes that most registrants that get approved will print one or more batches of forms for use or sale. After the print jobs are done, the printer will destroy or recycle the printing plate and move on to the next print job. When it wishes to print more manifests, the printer will need to create a new printing plate. We are not requiring the registrant to resubmit a sample of its approved

manifests each time it develops a new printing plate. As mentioned earlier, we will provide each registrant with an electronic file of the manifest, continuation sheet, and manifest instructions. We fully expect them to save the file directly as an electronic image (or negative) of the forms in their computer system to recreate their printing plate when needed. In this way, the Agency expects minimal typesetting and therefore minimal risk of human error in replicating the appearance and format of EPA's forms. As long as all of the approved registrants use EPA's electronic file and avoid typesetting their forms, we do not see the need to approve the form each time the printer develops a new plate for them.

Section 262.21(j) provides that EPA may, at its discretion, exempt a registrant from the requirement to submit a form sample under Sections 262.21(d) or (h)(3). A registrant may request an exemption from EPA by indicating why an exemption is warranted. We envision several reasons why a registrant might request an exemption.

For example, it would not be unusual for two or more registrants to rely on the same commercial printer to print their forms under the Registry. If a commercial printer prints the manifest on behalf of an approved registrant and then, subsequently, a second registrant applies to use that same printer, we do not believe it is necessary for the second registrant to submit new form samples under § 262.21(d), so long as the same printer will be printing the manifest using the same paper type, paper weight, ink color of the instructions and binding method of the form samples approved for the first registrant. After the printer's forms get approved the first time, the second registrant could submit the printer's original form samples for evaluation under the Registry. Once approved under § 262.21(e), the second registrant must use that printer to print its forms according to the specifications at § 262.21(f), as well as the paper weight, paper type, ink color of the instructions, and binding method of the printer's originally approved form samples. It also must pre-print a unique manifest tracking number on each manifest using its approved suffix.

Another common situation would be where a registrant gets approved to print a manifest using a certain paper type, paper weight, ink color of the instructions, and binding method, and subsequently wants to change one or more of these specifications. Under § 262.21(h)(3), the registrant must submit three form samples and get EPA approval. As discussed earlier, we believe the § 262.21(h)(3) requirement is important for evaluating whether a registrant's revised manifest meets the specifications at § 262.21(f). However, there might be some exceptions to this. For example, we do not believe we need to evaluate a revised form sample if we are aware that the revised specifications have already been approved for another registrant. As we evaluate and approve form samples under §§ 262.21(e) and (h)(3), we may post approved form specifications (*e.g.,* paper type, paper weight) on our Web site. If an approved registrant would like to change one or more of its form's specifications to another approved specification on our Web site, the registrant may notify EPA that it intends to do so, in lieu of submitting revised form samples. EPA could then relieve the registrant of the requirement to submit revised form samples.

Section 262.21(k) provides that an approved registrant must notify EPA by phone or e-mail as soon as it becomes aware that it has duplicated tracking numbers on any manifests that have been used or distributed to other parties. The states have emphasized to EPA the importance of registrants notifying EPA of even minor duplications of tracking numbers. Therefore, EPA has included this requirement to ensure registrants notify EPA of such occurrences. Upon notification of a duplicated number, EPA will try to determine the location of the forms in question and contact the customer to prevent the use of the forms. If this is not possible, we will notify the state manifest programs that the forms are in circulation.

Under § 262.21(l), if, subsequent to approval of a registrant, EPA becomes aware that the registrant's approved form does not satisfactorily meet the print specifications in paragraph (f) of this section, EPA will contact the registrant and require modifications to the form as needed. As discussed earlier in this preamble, EPA will request and evaluate samples of the registrant's proposed form under § 262.21(e) to determine whether it satisfies the print specifications at § 262.21(f). In the vast majority of cases, we expect this evaluation to provide enough information for EPA to determine effectively whether the registrant's form, as designed, will satisfactorily meet all of the print specifications when produced by the registrant. In rare cases, however, we believe it is possible that, subsequent to our approval under paragraph (e), we may become aware that forms produced by a registrant do not meet all specifications in a satisfactory manner. In particular, we are fully aware of the limitations inherent in evaluating samples of a registrant's forms (*e.g.,* the quality of its forms may vary significantly from one batch to the next based on many factors). If we become aware that the forms produced and distributed by a registrant do not satisfactorily meet the specifications (*e.g.,* based on complaints from states or waste handlers), we will contact the registrant to learn more about the problem and, if needed, request changes to the form or printing operation.

Under § 262.21(m), EPA might suspend and, if necessary, revoke printing privileges if we find that the registrant (i) has used or distributed forms that deviate from its approved form samples in regard to paper weight, paper type, ink color of the instructions, or binding method; or (ii) exhibits a continuing pattern of behavior in using or distributing manifests that contain duplicate manifest tracking numbers. We will send a warning letter to the registrant that specifies the date by which it must come into compliance with the requirements. If the registrant does not come in compliance by the specified date, EPA will send a second letter notifying the registrant that EPA has suspended or revoked its printing privileges. EPA believes suspension or revocation of printing privileges will be very rare.

Section 262.21(m) also requires an approved registrant to provide information on its printing activities to EPA, if requested. EPA notes that the rule does not require registrants to submit any scheduled reports to the Agency that would enable us to evaluate whether they have used or distributed forms with duplicated tracking numbers. As an initial matter, registrants must follow the procedures of their approved applications to tightly control their tracking numbers. We expect these procedures to be effective in minimizing the potential for duplication of numbers. Further, in its communications with states and commercial printers, EPA has found that, if a commercial printer identifies a duplicated number in a batch, it will address the problem (*e.g.,* by destroying the manifests containing the error) in order to maintain a good relationship with its customers. EPA believes the same dynamic will occur under the Registry process. A registrant that is itself a commercial printer will have a strong incentive to minimize, detect and report any duplicated numbers on forms that have been used or distributed. This will ensure good relationships with its customers and maintain a clean track record under the Registry. Registrants that use an unaffiliated company to

print the manifest will itself be that printer's customer. In this case, the printer has a similarly strong incentive to minimize and detect tracking number duplications.

Moreover, it is common industry practice for customers that enter into contractual arrangements with a printer to include terms and conditions controlling against the potential duplication of numbers (*e.g.,* by using terms such as ''no duplicated numbers'') and requiring reports to the customer of missing numbers. In fact, a registrant may choose to incorporate relevant provisions of its application into its contract with the printer.

3. *Final Manifest Print Specifications.* EPA is publishing the final manifest print specifications at § 262.21(f). As intended, the print specifications are minimally prescriptive. They prescribe specifications only where needed to ensure a basic level of consistency across registrants' manifests (*e.g.,* prescribing that each manifest must include six copies). Beyond this, the rule sets forth performance-based requirements that all manifests must achieve (*e.g.,* ''handwritten and typed impressions on the form must be legible on all six copies'') and allow each registrant to design its manifest accordingly. EPA has chosen this approach in recognition of commenters' requests for flexibility under the Registry system. In addition, the Agency acknowledges that there are many different ways to design an acceptable manifest. It would have been unnecessarily arbitrary to prescribe a single specification for each aspect of the manifest. Under the approach being finalized today, each registrant has considerable flexibility to design its manifest according to its own printing capabilities, customer preferences, and available resources (*e.g.,* existing inventory of paper).

Applicants who print the manifest form must adhere to the following printing specifications:

- The form must be printed with the exact format and appearance as EPA Forms 8700–22 and 8700–22A. We believe registrants will easily achieve this requirement, since we will provide them with an electronic file of the manifest, continuation sheet, and manifest instructions. They will convert the file into a suitable electronic image of the forms in their computer system and create a printing plate. EPA will provide the forms in a software program that will ensure that the manifest is consistently replicated across registrants' systems.
- A unique manifest tracking number assigned in accordance with a numbering system approved by EPA must be pre-printed in Item 4 of the form. The tracking number must consist of a three-letter suffix following nine digits. Each registrant will need to select a unique three-letter suffix. If approved to print the manifest, the registrant will use this suffix to generate its unique tracking numbers. EPA will post on our Web site a list of suffixes that have previously been approved. A prospective registrant will need to refer to the list to identify those that are already in use and thus unavailable to new registrants. Manifest tracking numbers can be added using one of at least two methods: crash numbering (*i.e.,* imprinting the number on the first copy and letting the number impress on the other copies) or press numbering (*i.e.,* imprinting the number on each copy and subsequently assembling the copies into the manifest). EPA is not requiring either method of numbering. However, we believe that crash numbering will generally result in fewer numbering errors. Under press numbering, miscollation of copies subsequent to the printing process can occur. This could result in a manifest that contains one or more copies whose tracking number is incorrect. This risk is not present with crash numbering. Because of this, EPA strongly encourages the use of crash numbering over press numbering. If a registrant proposes to use press numbering, its application should describe quality control measures to ensure proper collation of manifest copies.
- The form must be printed on 8½ x 11-inch white paper, excluding common stubs (*e.g.,* top-or side-bound stubs). The paper must be durable enough to withstand normal use. EPA is not specifying paper type or weight. Registrants must select the appropriate paper type and weight to ensure legibility on all six copies and paper durability.
- The form, including manifest tracking number, must be printed in black ink that can be legibly photocopied, scanned, and faxed, except that the marginal words indicating copy distribution must be in red ink.
- The form must be printed as a six-copy form. Copy-to-copy registration must be exact within 1/32nd of an inch. Handwritten and typed impressions on the form must be legible on all six copies. Copies must be bound together by one or more common stubs that reasonably ensure that they will not become detached inadvertently during normal use. In our communications with the states, we learned of their deep concern that the sixth copy of manifests is often illegible. This is a concern because generators may need to photocopy or fax the sixth copy to states. If the copy is illegible, this limits the state's ability to perform its functions effectively. Because of this, we require that handwritten and typed impressions on the form must be legible on all six copies.
- If the form does not have very close copy-to-copy registration, this could result in impressions on the inner and bottom copies that do not fall within the appropriate blocks. This could limit states' and waste handlers' ability to interpret or scan the impression (*e.g.,* if it falls on a black line of the form). To address this, we require copy-to-copy registration within 1/32nd of an inch. This is a standard specification within the printing industry.
- The copies of each form must be bound together by one or more common stubs that reasonably ensure that they will not become detached inadvertently during normal use.
- Each copy of the manifest and continuation sheet must indicate how that copy must be distributed, as follows:

Page 1 (top copy): ''Designated facility to destination State (if required)''

Page 2: ''Designated facility to generator State (if required)''

Page 3: ''Designated facility to generator''

Page 4: ''Designated facility copy''

Page 5: ''Transporter copy''

Page 6 (bottom copy): ''Generator's initial copy''

- The instructions in the appendix to 40 CFR part 262 must appear legibly on the back of the manifest copies as provided in this paragraph. The instructions must not be visible through the front of the copy when scanned, photocopied, or faxed.

Manifest Form 8700–22:

- The ''Instructions for Generators'' on Copy 6;
- The ''Instructions for International Shipment Block'' and ''Instructions for Transporters'' on Copy 5; and,
- The ''Instructions for Treatment, Storage and Disposal Facilities'' on Copy 4.

Manifest Form 8700–22A:

- The ''Instructions for Generators'' on Copy 6;
- The ''Instructions for Transporters'' on Copy 5; and,
- The ''Instructions for Treatment, Storage and Disposal Facilities'' on Copy 4.

The purpose of the above requirement is to ensure that the manifest instructions are consistently displayed on the back of the manifest copies. In

addition, the requirement provides that instructions cannot show through the front of the forms when scanned, photocopied or faxed. If the paper weight is too light and/or the ink color of the instructions is too dark, the instructions might bleed through the front of the copies. If the ink color is too light, it may not be legible to waste handlers that may be filling out the manifest in dimly lit situations (*e.g.,* inside of a truck). Registrants must determine the appropriate ink color and the extent of screening of the ink, if needed, to minimize bleed through but ensure legibility.

The specifications at § 262.21(f) leave a number of decisions to the registrants's discretion that should be further clarified. These include the following:

Paper type. Registrants may select the appropriate type of paper to use for their manifest. As provided at § 262.21(d)(2)(i), EPA defines ''paper type'' to include the manufacturer of the paper and grade of paper. EPA has found that paper manufacturers generally provide a range of paper grades. These grades may be more or less appropriate for a six-part form. For example, the highest quality papers are generally the brightest (whitest), and hence, handwritten and typed imprints are generally most legible on them. In addition, the highest quality carbonless papers normally contain the highest amount of coating, which results in a more effective transmission of imprint from copy to copy. EPA believes it is important to hold registrants to their paper type selection, as provided under § 262.21(e), so that they do not switch paper types subsequent to approval of their forms, unless they seek EPA approval of the changes under § 262.21(h)(3).

In addition, some papers may contain a range of recycled content. All commenters on the proposed rule believed EPA should take the lead on encouraging the use of recycled paper. In fact, one commenter recommended that EPA require registrants to use recycled paper for manifest forms. EPA has not taken this recommendation, which goes beyond the scope of today's rulemaking. EPA notes, however, that it has developed guidelines for federal procurement of recycled-content paper under section 6002 of RCRA and section 505 of Executive Order 13101. Under these guidelines, EPA requires procuring agencies to buy uncoated printing and writing grade papers, such as those used for manifest forms, containing 30% post-consumer fiber. The agency urges registrants to consider for the manifest recycled paper that meets the specifications at § 262.21(f).

Paper weight. Paper weight has several implications for the manifest. Lighter paper is generally thinner, and therefore, it is easier to make impressions copy-to-copy. However, if paper is too light, it is prone to tearing in normal use (*e.g.,* tearing in an automatic-feed copier or when detaching a copy from the manifest). Registrants must select a paper weight for each copy of the form that conveys handwritten and typed impressions onto all six copies, but that is also durable enough to withstand normal use. In evaluating existing manifest forms, EPA has found a number of forms with varying paper weights that transmit impressions effectively. Other forms consist of paper that is too heavy to produce legible bottom copies. We also have found forms with paper that is too fragile and tears easily. Because of the wide range of paper weights that result in legible bottom copies of the manifest, EPA has refrained from prescribing a paper weight and leaves this decision to the registrant. However, EPA believes it is important to hold registrants to their paper weight selection, as provided under § 262.21(e), so that they do not switch paper weights subsequent to approval of their forms, unless they seek EPA approval of the changes under § 262.21(h)(3).

Ink color of the manifest instructions. As described earlier, the instructions on the back of the manifest must be light enough so that they do not: (1) Show through on the front (*e.g.,* printed in black ink in a light enough screen to appear as light gray so that photocopiers and scanners do not pick up the text); or, (2) interfere with the transmission of the image from copy to copy (*e.g.*, from copy 4 to copy 5) when the manifest is filled out. The instructions also must be legible.

EPA has not prescribed an ink color or ink darkness. We recognize that the appropriate ink color and darkness will depend on, at the least, the paper weight of each copy. Because we do not prescribe paper weight, we do not prescribe ink color or darkness. However, we hold registrants to their ink color, as provided under § 262.21(e), so that they do not switch ink colors subsequent to approval of their forms, unless they seek EPA approval of the changes under § 262.21(h)(3).

Binding method of manifest copies. Some manifest forms are currently printed on continuous forms with side perforations. Others are printed on individual forms (unit sets), which are typically bound on top. Continuous forms generally are intended for use with continuous feed printers (such as impact printers), whereas unit sets are appropriate for typewriters and manual completion. Because some users prefer one type of binding or the other, we believe it would be too constraining to require only one type. Therefore, we leave the binding of the form to registrant discretion. However, we are concerned that some registrants might choose to crimp the sheets together but not glue them, thereby increasing the likelihood of the pages inadvertently separating during normal use. In addition, some registrants might bind top bound forms without a stub by ''edge gluing.'' The edge gluing method is typically used for forms that have few pages, but could conceivably be tried for a six-part form. Edge-glued forms are unacceptable for manifest purposes and are not allowed because the sheets become loose when one ply is removed. Therefore, the rule provides that ''copies must be bound together by one or more common stubs that reasonably ensure that they will not become detached inadvertently during normal use.'' Although we do not prescribe a binding method, we hold registrants to the binding method of their approved forms, as provided under § 262.21(e), so that they do not switch methods subsequent to EPA approval, unless they seek EPA approval of the changes under § 262.21(h)(3).

IV. Rejected Load and Container Residue Shipments

A.1. *Rejected Load and Container Residue Shipments—Introduction.* In the May 2001 NPRM, we proposed to improve the tracking of certain problematic hazardous waste shipments known as ''rejected loads'' or ''container residues'' by adding data elements to the manifest form for identifying rejected wastes and residues and by clarifying the manifest requirements and procedures for tracking these wastes. In the proposal, we discussed container residue as ''the hazardous waste that remains in containers such as drums and in vehicles used for transport (such as tanker cars or box cars) after most of the contents of the container have been removed.'' These residues may be difficult to remove because the contents may have congealed and the receiving facility may not have the equipment to completely empty the container. As a result, the container may contain more waste than the regulatory threshold allows for meeting the RCRA definition of ''empty,'' that is, more than 3% of a hazardous waste in a container less than or equal to 119 gallons, or more than 0.3% of a hazardous waste in a container greater than 119 gallons, and

that must be managed as hazardous waste.[3] The proposal also described a rejected load as a shipment of hazardous waste that a facility receives, but cannot accept, either because of restrictions in the facility's permit or capacity limitations. A rejected load includes all shipments a facility rejects, in whole or in part, whether rejection occurs before or after the facility has signed the manifest.

The proposed rule addressed both the manifest procedures that would track rejected wastes and residues to alternative facilities, and the procedures that would deal with the rare occasions when a facility must return rejected wastes or container residues to the generator. In all such cases, the proposed regulations would require facilities to note information about the rejected waste or regulated residue on the original manifest, to sign the original manifest certification and to issue a new manifest to continue the shipment of the rejected load or residue to another off-site destination. Detailed discussions of the new tracking procedures for a rejected load and container residue shipment and the proposed modifications to the manifest discrepancy provisions follow.

2. *Proposed Added Fields to Discrepancy Item.* As part of the new tracking procedures for rejected waste and container residues, we proposed to modify the Discrepancy field (*i.e.*, Item 19 on old manifest) by providing more explicit tracking specifications for regulated residues and rejected wastes. EPA also proposed to provide more space in the Discrepancy field for the designated facility to identify the material affected by the discrepancy and to explain the reason for the discrepancy. In addition, EPA provided additional space on the manifest form (titled ''Manifest Tracking Number'') for the rejecting facility to cross-reference the original manifest with the ''new'' Manifest Tracking Number associated with the new manifest form. On the new manifest, the facility also would reference the ''old'' manifest tracking number in the Special Handling field. The Discrepancy field and Facility Certification on the new manifest would be reserved for use by the next facility, if necessary (*e.g.*, if the shipment is rejected a second time).

EPA also proposed codifying the proposed changes at 40 CFR 264.71 and 264.72 (40 CFR 265.71 and 265.72 for interim status facilities), and 263.21(b) to provide more explicit requirements for tracking rejected wastes and regulated container residues. For instance, the proposal clarified in § 264.71(a) that a facility must sign the facility Owner or Operator Certification field on the manifest for both waste receipts and waste rejections. We emphasized in the proposal that the facility certification attests to the receipt of the hazardous wastes described on the manifest, except as noted in the Discrepancy field. The proposal also clarified that residues and rejected wastes, including full or partial load rejections, are discrepancies to be reported on the Discrepancy field. So, facilities must sign the Owner or Operator Certification field on every manifest relating to shipments brought to a facility for delivery, either to acknowledge receipt of all the materials on the manifest, or to acknowledge that those materials identified in the discrepancy space (including rejected wastes and residues) were not received for management at the facility.

The proposed modifications to the manifest regulations at 40 CFR 264.72 (265.72 for interim status facilities) reflect the changes proposed to the discrepancy space of the manifest form. The form includes new data fields in the discrepancy space to track rejected waste and residue shipments. Specifically, the Agency proposed to revise 40 CFR 264.72(a), to clarify that the scope of the term ''manifest discrepancies'' would be broadened to include not only the significant differences in waste quantities or types that are the subject of the current discrepancy regulation, but also rejected wastes and regulated container residues. We proposed to retain previous requirements for identifying, reconciling and reporting ''significant discrepancies'' at § 264.72(b) and (c), which would address these as ''significant differences'' in quantity or in type of wastes. We also proposed to codify the new procedures for addressing rejected wastes or regulated container residues as manifest discrepancies at new § 264.72(d), (e), (f), and (g) for permitted facilities, and in new § 265.72(d), (e), (f), and (g) for interim status facilities. The proposed tracking procedures for rejected waste shipment and container residues are detailed below.

3. *Proposed §§ 264.72(d) and 265.72(d).* The proposed requirements for 40 CFR 264.72(d) and 265.72(d) are as follows:

If you are . . .	You must . . .	And . . .	However,
A facility rejecting a waste or container residue that exceeds quantity limits for ''empty'' as defined in 40 CFR 261.7(b).	Contact the generator for instructions for forwarding the waste to an alternate facility.	Send the waste according to the generator's instructions.	If it is impossible to locate, in a timely manner, an alternate facility that can promptly receive the waste, you may return it to the generator, with the generator's consent.
A facility forwarding rejected waste or container residue to an alternate facility.	Ensure that either the delivering transporter maintains custody of the waste or, if the transporter leaves the premises, provide for secure temporary custody of the waste.	Prepare a new manifest according to the relevant requirements (§ 264.72(e) or (f) for permitted facilities; § 265.72(e) or (f) for interim status facilities.	N/A.

[3] As noted previously in the preamble to today's rule, the Agency is modifying the definition of bulk container from 110 gallons to 119 gallons to be consistent with the DOT regulations.

4. *Proposed §§ 264.72(e),(f) and 265.72(e),(f).* The proposed requirements for 40 CFR 264.72(e),(f) and 265.72(e),(f) are as follows:

If you are . . .	You must . . .	And . . .
A facility forwarding rejected wastes or container residues off-site to an alternate facility.	Prepare a new manifest in accordance with § 262.20(a).	Follow the relevant instructions in either § 264.72(e)(1) through (e)(6), or § 265.72(e)(1) through (e)(6).
A facility returning rejected waste to its generator.	Prepare a new manifest in accordance with § 262.20(a).	Follow the relevant instructions in either § 264.72(f)(1) through (f)(6), or § 265.72(f)(1) through (f)(6).

Because the rejecting facility was responsible for putting the reject waste back into transportation, we proposed to require them to sign the Generator's Certification field to verify that they are shipping or offering the wastes in transportation and would be liable, in this capacity, for the truth of the ''shipper's certification'' language included in the generator's certification statement. Since the rejecting facility is not the RCRA generator of the waste, it is not bound by the waste minimization certification language. In the 2001 NPRM, we requested comment on an alternative approach to signing the generator certification. That is, we took comment on requiring the rejecting facility to consult with the generator about the disposition of the rejected waste, and then sign the generator's certification ''on behalf of'' the initial generator. This would result in the manifest being completed in the same manner (*i.e.*, Items 1 and 4 and listing the destination facilities) as under the proposed approach. However, by signing the generator's certification ''on behalf of'' the initial generator, the generator would be bound by the rejecting facility's signature on the certification statement. The rejecting facility signs the certification as the generator's authorized agent, but would not be liable for the proper execution of any pre-transportation acts that it performed. (Arguably, however, the rejecting facility would meet the definition of an ''offeror'' under DOT's HMR and would not be relieved of liability.)

5. *Proposed §§ 264.72(g) and 265.72(g).* Paragraph (g), as proposed, would clarify manifest completion procedures for any designated facility that rejects a full or partial load or container residue shipment after it has signed and returned the original manifest to the generator. If, after signing and returning the original manifest, a facility rejects part or all of a shipment, or discovers regulated residues, it must send the generator and delivering transporter a revised copy of the original manifest, reflecting the rejected waste or residue information in the discrepancy space. The facility must also re-sign and date the manifest, certifying the facts as amended.

6. *Proposed Changes to § 263.21(b).* We proposed to amend 40 CFR 263.21(b) by adding paragraph (b)(2). Paragraph (b)(2) distinguishes between the transporter responsibilities for wastes characterized as ''undeliverable'' due to either emergency, rejection or container residues. We proposed to retain § 263.21(b)(1), the existing transporter requirements, that apply to shipments that cannot be delivered due to an emergency, such as a strike, fire or similar emergency event which closes the designated facility's or next transporter's operations or that otherwise precludes the transporter from delivering the waste. In such emergencies, the transporter that cannot deliver the waste shipment to the designated facility, alternate designated facility or next designated transporter must contact the generator for further directions and revise the manifest according to the generator's instructions. We did not reconsider, reopen or request comment on these existing requirements. We merely recodified the existing provision at § 263.21(b)(1). Our proposed changes to § 263.21(b)(2) addressed transporters' responsibilities with respect to rejected wastes. Transporters would need to obtain the facility owner's or operator's signed and dated certification identifying the rejection on the manifest. The transporter also would need to retain one copy of this manifest, and give any remaining copies of the manifest to the rejecting TSDF, who processes them in accordance with the new procedures at §§ 264.71 and 264.72.

7. *Proposed Generator Regulations at 40 CFR 262.34.* Furthermore, the proposal revised the hazardous waste generator accumulation provisions at 40 CFR 262.34 by adding paragraph (j). Paragraph (j) requires hazardous waste generators to manage a rejected load and container residue shipment according to 40 CFR 262.34(a) or 262.34(d) depending on whether the generator was subject to the 90-day or 180-day accumulation time provisions when the waste shipment was returned to the generator. Generators who are subject to the 90-day accumulation provisions have up to 90 days to send the rejected shipment or container residue to an alternate facility, as long as the generator received the shipment in accordance with the manifest discrepancy provisions at § 264.72 or 265.72; however, generators who are subject to the 180-day accumulation provisions have up to180 days (or more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more) to send the rejected shipment or container residue to an alternate facility. In the preamble proposal, we incorrectly explained that the accumulation time for the returned shipment is based on the generator's status at the time the original shipment was sent to the TSDF. We also explained that generators would not be required to obtain a RCRA permit while the returned waste is on-site as long as they complied with § 262.34(a) (for generators with 1000 kg or more on-site at the time the waste is sent) or § 262.34(d) (for generators with less than 1000 kg on-site).

B.1. Final Tracking Procedures for Rejected Waste and Residue Shipments. EPA retained most of the manifest discrepancy provisions we originally proposed, including those provisions for rejected loads and container residue shipments. However, we are finalizing the proposed paragraph 262.34 (j) as new paragraph 262.34 (m) (New paragraph (k) and (l) were added to § 262.34 after the May 2001 proposal.) In addition, we altered certain provisions in response to suggestions from commenters. In general, most commenters supported our proposed tracking procedures for rejected waste and container residue shipments.

However, several commenters expressed concern and suggested changes to the proposed manifest discrepancy provisions, particularly in the following areas: (1) Preparing a second manifest in all rejected waste or residue scenarios; (2) Requiring the rejecting TSDF to sign the generator

certification; (3) Allowing the original generator who receives a rejected load back from the rejecting facility to accumulate that waste for 90 or 180 days before sending it off-site to an alternate TSDF; and, (4) Allowing the rejecting facility to stage the waste shipment before it forwards the shipment to an alternate facility or return the shipment back to the original generator. Detailed discussions on the final changes to the manifest discrepancy provisions are provided below.

2. *Comment Analysis and Final Provisions for Second Manifest.* Several commenters supported our proposed tracking procedures for rejected waste and container residue shipments. However, several commenters objected to the requirement that the designated facility prepare a second manifest in all rejected waste or residue scenarios because, in their view, preparing a second manifest imposes unnecessary burden and complexity to the system. Furthermore, commenters argued that preparing a second manifest will lead to double counting of hazardous waste; the original and new manifest cover the same quantity of waste (or a portion of it, in the case of residues). Consequently, states could potentially tax waste handlers again for the same shipment. These commenters argued that a second manifest is not necessary when a fully rejected load is returned to the generator or sent to an alternate facility. Many of these commenters suggested, as an alternative, that waste handlers note and sign the original manifest in such conditions. One commenter also suggested that EPA add an additional signature block in the Discrepancy field on the form (*i.e.*, Item 18c of new form) so that both the alternate facility and the original generator who receives a rejected load from the rejecting facility can sign the original form for return shipments.

In response to commenters' suggestions to allow designated facilities to note and sign the original manifest for full load rejections, we have modified §§ 264.72(e) (permitted facilities) and 265.72(e) (facilities with interim status). With today's action, the rejecting TSDF can use the original manifest to forward a rejected shipment or container residue to an alternate facility or original generator, provided that the following conditions are met: (1) The rejecting facility must reject the full shipment; and (2) The transporter attempting the delivery must still be at the facility at the time of the rejection, in order to continue transporting the rejected shipment to the alternate facility. In these limited circumstances, the final rule considers that the rejected waste shipment is continuing in transportation, such that all the information describing the source, types and quantities of waste shipped remains accurate, and only a new destination facility needs to be entered on the form. Today's final rule provides two new fields to implement this procedure: an alternate facility space (Item 18b) to identify the alternate facility (or the original generator if the shipment is being returned), and a new signature space (Item 18c) for the alternate facility (or the original generator if the shipment is being returned) to sign and date the form to indicate the receipt of the shipment.

Thus, today's action requires the TSDF to complete a second manifest only if it rejects a partial load or container residue shipment, or if it rejects a full load or container shipment at a point in time after the transporter attempting delivery has left the facility's premises. Paragraph (e)(7) describes the manifest close-out requirements for facilities that use the original manifest to forward a full load rejection to an alternate facility. Specifically, the rejecting facility must retain a manifest copy for its records, send a copy to the generator, and give the remaining copies of the manifest to the transporter to accompany the shipment. The Agency notes, however, that a manifest copy may not be available. In these cases, the facility must photocopy or fax the most legible copy of the form available to ensure that the extra manifest copy is legible.

Also, today's rule modifies our proposal for manifest discrepancy provisions, and allows the rejecting facility to note and sign the original manifest for full load rejections provided the transporter has not departed from the facility's premises. Also, EPA has modified the proposed Discrepancy field on the manifest form by adding a new item for use by an alternate facility or generator who receives a full load rejection or container residue shipment. They can sign the new Item 18c to close out the original manifest once they receive the hazardous waste shipment from the rejecting facility. Importantly, the manifest discrepancy provisions do not change the proposed requirement at 264.71(a) for permitted facilities or 265.71(a) for interim status facilities that a facility must sign and date the facility owner or operator certification on the manifest for both waste receipts and waste rejections. Therefore, the alternate facility (or the original generator if the shipment is being returned) must sign and date the manifest to acknowledge receipt of a shipment in Item 18c, but must note any discrepancies associated with that shipment either by hand in the alternate facility field, if space allows, or by attaching a separate sheet explaining the materials covered by the discrepancy and the reasons for the discrepancy or efforts to resolve it.

Other commenters suggested that the rejecting facility should use the original form for all rejected load and container residue scenarios. EPA limited use of the original manifest to track full and immediate rejections, because this is a fairly simple scenario that the original manifest form should be able to track without introducing complexity or confusion to the form. Moreover, the immediate, full load rejection presents facts that are consistent with the view that the rejected waste shipment is continuing in transportation. The generator information, the transporter information, and description of the types and quantities of wastes shipped remains accurate, and only the information on the destination facility is being revised. Since the transportation of the waste continues, the rejecting facility is not offering the shipment in transportation under these facts, and it is not acting as an offeror. Thus, we concluded that the rejecting facility should not be required to initiate and sign a new manifest as the offeror.

When a waste shipment is partially rejected, on the other hand, only part of the original shipment is re-introduced into transportation. These facts require that the shipping paper (manifest) be revised to accurately describe the contents of the re-shipment. In some of these cases, the materials being re-shipped also may require re-packaging, re-labeling, and re-marking as well. In any case, we believe that these facts support the view that there is a new movement with respect to the partially rejected waste, and that the rejecting facility must complete a new manifest and sign the certification statement to indicate that the materials are properly described and are being offered in proper condition for transportation. Also, except in the most simple examples of partially rejected loads, it would be very difficult to correct the shipping descriptions for the items shipped under the original manifest by trying to delete items or otherwise trying to markup these descriptions to sort out what items and quantities were received, what items and quantities were rejected and were being re-shipped, etc. Since we believe it is essential to present an accurate and unambiguous description of the wastes being re-shipped, and since we believe that it is appropriate that the facility

rejecting a partial shipment assume the role of offeror with respect to the wastes being re-shipped, we conclude that these purposes are best served by the initiation of a new manifest for all partial rejections.

Also, when a full load is rejected, but temporarily staged by the rejecting facility after the delivering transporter has left the premises, the original transportation of the waste shipment has ended. Therefore, it will require a new movement of the waste shipment to reintroduce the rejected wastes in transportation. Under today's rule, the rejecting facility initiates this new movement by completing a new manifest and signing it as the one offering the wastes in transportation. Since several days or weeks might pass while the materials are staged at the rejecting facility, it is important that the rejecting facility certify that the materials are properly described and in proper condition for transportation at the time the new movement begins. Also, under these facts, the information on transporters and destination facilities must be updated to reflect the new arrangements for the rejected shipment. We conclude that these purposes are best served again by requiring a new manifest to be initiated by the rejecting facility in all cases where rejected wastes are temporarily staged at the facility. In addressing the issues in this section, we introduced the idea that a rejecting TSDF may be offering these rejected wastes in transportation when they are re-shipped. The offeror concept is explained in greater detail in the following preamble section.

3. *Comments Analysis and Final Generator Certification Block.* Commenters were divided on our proposal to require the rejecting facility offering the waste in transportation to sign the shipper's certification as the party offering the wastes in transportation. Generators expressed strong support for the proposal, and greatly preferred the proposal to the alternative under which the rejecting TSDF would be viewed as signing the new manifest ''on behalf of'' or as the agent of the generator. The commenters supporting this offeror approach encouraged EPA to adopt the proposed regulatory language at § 264.72(d)(1) and (e)(6), which would require the TSDF to explain to the original generator its reasons for rejecting the waste and to consult with the generator and determine where the rejected waste or container residue shipments should be sent. After doing so, the rejecting facility would then initiate the new manifest for the new movement of the shipment in transportation by signing the Generator's Certification in the capacity as offeror of the shipment.

Several commenters in the TSDF sector criticized this approach, arguing that the rejecting facility would appear to be assuming full generator liabilities for the waste by virtue of signing the Generator's Certification. Other TSDF commenters also objected to the proposed approach because it seemed to suggest that the rejecting TSDF acting as ''offeror'' could in fact be liable for the proper performance of *all* the pre-transportation acts, including those already performed by the initial generator. In general, these commenters argued that under the ''offeror'' proposal, the responsibility for properly packaging and re-shipping the waste would now appear to fall on the TSDF, when the generator already may have selected and filled the container, and may be more aware than the rejecting TSDF of the exact nature of the material. Therefore, these commenters contend that the rejecting facility cannot really attest to the packaging and other pre-transportation requirements performed by the generator, and so should not be held responsible for their performance when re-shipping rejected wastes.

In general, those TSDF commenters that criticized the proposed approach tended to support the alternative approach requiring TSDFs to sign ''on behalf of'' the initial generator. One TSDF commenter, however, noted that a TSDF rejecting and re-shipping waste would be liable as offeror regardless of the ''on behalf of'' language, since the TSDF is initiating the new shipment. Another trade organization (the Environmental Technology Council) that represents TSDFs supported the offeror proposal, if the form were revised to make it more explicit that the TSDF is signing the manifest as an offeror, not a generator.

While the TSDFs objecting to the proposal tended to support the alternative approach under which the rejecting TSDF would sign the new manifest ''on behalf of'' the generator, the generators that commented on the proposed rule submitted strong comments opposing this alternative. These commenters in the generator sector argued that this ''on behalf of'' alternative would cause generators to be liable under DOT regulations for any pre-transportation functions performed improperly by the rejecting facility. They argued further that the generator could not possibly supervise from a distance the proper execution of the pre-transportation acts that the rejecting facility might perform before signing the certification statement, so it would be unfair to have the generator become bound by the TSDF's signing the form as the generator's agent.

In response, we are codifying in today's final rule the manifest signature requirements at § 264.72(d)(1) and (e)(6). As explained in section II.G.4. above, we also are modifying the Generator's Certification field by renaming it the ''Generator's/Offeror's Certification,'' in order to clarify that either the generator or an offeror may sign the certification. The generator's signature certifies to both the waste minimization and shipper's certification statements, while a rejecting facility signing as an offeror of a shipment certifies only to the content of the shipper's certification language, as it applies to information the offeror knows or has a reason to know.

Today's action also clarifies that any rejecting facility that prepares and signs a new manifest to re-ship a rejected waste will be subject to liability only for the limited ''offeror'' or pre-transportation requirements. In such cases, the rejecting facility acting as an offeror is not considered a ''generator'' of the rejected waste, and generally is not subject to the full hazardous waste generator requirements under 40 CFR part 262.

We are finalizing the proposed approach concerning rejecting facilities signing new manifests because we believe that this approach is the outcome required under the Hazardous Materials Regulations (HMRs), and because we believe that it addresses the rejecting facility's responsibilities for re-shipments more appropriately. We agree with the generator comments to the effect that rejecting TSDFs should not be viewed as agents of the generators when they re-ship rejected wastes and sign the manifest to initiate a new movement of the rejected materials. If a shipment, for example, has been partially received and partially rejected by a TSDF, it is fitting that the TSDF rejecting a partial load be responsible for ensuring that the portion of the waste to be re-shipped is properly described on the new manifest, and that the packages are in good condition and properly marked and labeled at the time the rejected waste again moves in commerce. Also, if the facility has rejected a full load and staged it temporarily at its facility pending new arrangements for re-shipment, it is appropriate that the rejecting facility, when it initiates the new movement of the shipment by signing the new manifest, verify that the shipment is properly described and in proper condition for transportation at the time the new movement begins. This is accomplished when the rejecting facility signs as offeror of the re-shipped

wastes, as the offeror is then certifying to the proper performance of the pre-transportation functions. Moreover, we believe that this is the result required under the applicable requirements of the HMRs as implemented by DOT for the transportation of hazardous materials in commerce. These hazardous waste shipments are subject to the HMRs, and as we discussed above in section II.G.4. of this preamble, DOT recently has issued a final rule which clarifies the responsibilities of shippers, carriers, and other offerors for performance of the pre-transportation functions, and the significance of the offeror's signature in certifying that a hazmat shipment has been prepared in accordance with the HMRs. See 68 FR 61906 at 61908—61912 (October 30, 2003). RCRA hazardous waste transportation requirements must be implemented consistently with the HMRs. The HMRs require that facilities which re-ship rejected wastes (either partial load rejections or full loads that have been staged for a time and then reintroduced in transportation) to assume the offeror responsibilities for the re-shipments, since the re-shipment of the waste is a new movement. In each case, there is a new movement of the hazardous waste, and the shipper's certifications must be current at the time the new movement of the rejected wastes begins. On the other hand, when a facility rejects immediately a full waste shipment, and directs the transporter to forward the rejected waste to an alternate facility (or back to the generator) by completing the Alternate Facility item on the revised form, there is not a new movement of the waste. Rather, the waste shipment in such a case remains in transportation, and the rejecting facility does not need to sign the Generator's/Offeror's Certification, as it has not engaged in any pre-tranportation functions with respect to a fully and immediately rejected waste shipment.

Moreover, with respect to the TSDF comments that objected to the offeror approach because they would be responsible for pre-transportation acts (*e.g.*, selecting, filling, marking containers) that already were performed by the original generator, we wish to provide additional clarification of their offeror liability under the final rule. In the October 30, 2003 final rule codifying the pre-transportation functions, DOT confronted similar issues from brokers, freight forwarders, and other 3rd party intermediaries who handle hazmat shipments. These intermediaries similarly questioned the fairness of subjecting them to full compliance with the pre-transportation functions, when the intermediaries might perform only limited pre-transportation functions of their own (*e.g.*, issue a house bill of lading), while relying heavily on the information supplied and functions previously performed by shippers or underlying carriers. See 68 FR 61906 at 61911. In responding to this comment, DOT stated that it agreed with the commenters that it would be unfair to hold the intermediaries liable for errors made by parties over which they have no operational control. Instead, DOT explained that intermediaries who prepare shipping papers and sign the shipper's certification assume responsibility for compliance with the pre-transportation requirements ''for all aspects of that shipment about which he knew or should have known.'' Id. In its explanation of this issue, DOT stated that it was proper for the intermediary preparing a shipping paper to rely upon the information supplied by the original shipper, unless it conflicts with other information he obtains about the shipment. Id.

Since hazardous waste handlers also are subject to these HMR provisions, we believe that this discussion from the October, 2003 DOT rule addresses fairly the concerns expressed by RCRA TSDFs who reject and re-ship wastes. The TSDF that signs a new manifest as offeror of a rejected waste shipment is responsible for performing properly any of the pre-transportation functions that it actually performs (*e.g.*, repackaging and marking specific containers, completing the manifest), but the TSDF may reasonably rely upon the information supplied and pre-transportation functions previously performed by the original generators or transporters. If the TSDF knows of an error, for example, in classifying or describing a specific waste, or if it should know that a container is leaking or is not properly labeled, it must correct these problems before reintroducing the rejected wastes into transportation. However, the TSDF re-shipping such wastes is not responsible for errors made by previous waste handlers in their performance of pre-transportation functions, if the errors are such that it can be said that the TSDF neither knew, nor should have known, about the errors. We believe that this policy mitigates any concerns that TSDFs might have about the unfairness of their being asked to certify to the proper performance of the pre-transportation functions. The TSDF will be able to rely upon what has been done already and supplied by previous handlers, as long as they do not have a reason to believe the information provided by previous handlers is false. The rejecting TSDF need not re-perform all of the offeror responsibilities; it need only re-perform those activities that it knows or should know are necessary to bring a shipment into compliance with the pre-transportation functions in the HMRs.

4. *Comments Analysis and Final Returned Shipments.* In general, commenters supported our proposals to allow generators to receive rejected shipments from the rejecting facility, and to allow them additional on-site accumulation time to locate an alternate facility and send the rejected shipment there. Industry and state commenters both tended to support the proposed rule's clarification that in the case of a return shipment of rejected waste to a generator, the generator may be shown on the manifest as the designated facility for the receipt of the returned waste. However, several state agency commenters suggested that this policy would be further strengthened and clarified if the definition of ''designated facility'' in 40 CFR 260.10 were amended to include generators taking back their rejected wastes. EPA agrees with these comments, and today's final rule amends the definition of ''designated facility'' in 40 CFR 260.10 to clarify explicitly that generators receiving waste shipments that are being returned to the generator after a rejection by a TSDF are another type of designated facility that may be named on the hazardous waste manifest to receive these types of waste shipments.

Other commenters supported returning the rejected shipment back to the generator, but did not support granting the generator another 90 or 180 day accumulation period. These commenters argued that extra time would not help to prevent problem shipments or sham activities. One commenter suggested that EPA grant generators 30 additional days. The commenter argued that the reduced timeframe would help to ensure that problem shipments would not occur, because generators would review designated facilities more closely to make sure they had the means to remove residues from the containers. The commenter further argued that the approach would foster improved management of the waste and would not lead to a situation where a small quantity generator could not take back rejected wastes, because it would exceed their site accumulation limitation.

We understand these commenters' concerns, but believe it is more appropriate to grant generators the

additional 90/180 days to locate an alternate facility. First, the 90/180 day timeframe already exists under the existing 40 CFR 262.34 accumulation provisions, and we do not believe we have sufficient record to support a shorter time frame. Second, given that the generator will have to make new arrangements with a hauler to transport the waste off-site and arrange with an alternate facility to receive the shipment, it has essentially begun a new event. Therefore, the contingencies and timing affecting the original time frame no longer applies to the returned shipment. Based on these factors, today's rule grants generators an additional 90/180 days to send the waste shipment to an alternate facility.

5. *Comment Analysis and Final Staging of Waste at the Rejecting Facility.* In general, commenters supported our proposal, but some expressed concern that the qualitative term ''timely manner'' has too broad a range of interpretation, since the term is not clearly defined. EPA agrees with these commenters and has thus revised § 264.72(d)(1) to include a default timeframe of 60 days. Commenters differed on the length of time that EPA should grant a rejecting facility to stage the rejected load or container residue shipment. Several commenters suggested that EPA grant the rejecting facility 90 days to stage the rejected waste or container residue so that they could reconcile the problem shipment with the generator, forward it to an alternate facility or return it to the generator. These commenters stated that without adequate time, the rejecting facility would have no choice but to return the shipment to the generator. Other commenters suggested shorter timeframes, ranging from 10 to 30 days, pointing out that the TSDF can return the waste to the generator if they can not locate an alternate facility.

After analyzing comments, EPA believes 60 days is sufficient time for the rejecting TSDF to consult with the generator, locate an alternate facility and forward the shipment or return it to the generator. While we understand that there is some precedent for a 90-day accumulation period for generators when they initially accumulate their wastes on-site, we believe that there are distinguishing features which we believe support a 60-day limit on staging by a rejecting TSDF. First, there are very few management controls on temporary staging of rejected wastes by TSDFs, as opposed to the detailed technical requirements that apply to generator accumulation under 40 CFR 262.34(a). Since there are few requirements imposed on TSDF staging, we believe that a shorter time period for temporary staging of rejected wastes is appropriate, particularly given that such wastes may be rejected because the TSDF lacks authorization to manage them under its RCRA permit. Second, TSDFs rejecting waste are usually much more familiar with the waste management industry than are generators. TSDFs deal with waste transporters and other waste management facilities as a matter of course, so the logistics of arranging the forwarding or return of temporarily staged wastes should not raise difficult issues for the TSDF. Finally, in most cases, the rejecting TSDF can return the staged waste to the generator, if it is not able to find an alternate facility. We have also revised the regulation to clarify that the TSDF does not need permission to return the shipment to the generator.

We are aware that some states currently allow TSDFs to stage rejected waste shipments at their facility, but by regulation or by permit restrict the staging times to significantly less than 60 days. We acknowledge that a staging timeframe of less than 60 days (*e.g.*, 10 or 30 days) may be adequate time in some instances. However, based on comments, we believe that scheduling difficulties, preparation of new waste profiles, or other unforseen circumstances may arise that could require TSDFs to stage a rejected waste or residue for a number of weeks. In such instances, a shorter timeframe would not afford the TSDF adequate time to reconcile the rejected shipment or residue. We believe the default 60-day time limit will provide rejecting facilities sufficient time to reconcile such shipments and forward them to an alternate facility.

V. Final Unmanifested Waste Reporting Requirements

In the May 2001 NPRM, EPA proposed to revise the unmanifested waste reporting requirement at § § 264.76 for permitted facilities and 265.76 for interim status facilities. Sections 264.76 and 265.76 currently require TSDFs to submit an unmanifested waste report to the Regional Administrator on EPA form 8700–13B within 15 days after they have received a waste shipment without a manifest. Specifically, the proposal removed the requirement that the TSDF use EPA form 8700–13B to submit its unmanifested report, and proposed that the TSDF submit either a typed, handwritten or electronic note. The typed, handwritten or electronic note must be legible, and must contain the following information: (a) The EPA ID Number, name and address of the facility; (b) The date the facility received the waste; (c) The EPA ID Number, name, and address of the generator and the transporter, if available; (d) A description and the quantity of each unmanifested hazardous waste the facility received; (e) The method of treatment, storage, or disposal for each hazardous waste; (f) The certification signed by the owner or operator of the facility or his authorized representative; and (g) A brief explanation of why the waste was unmanifested, if known.

We explained in the proposal that the unmanifested requirements the Agency announced in the January 28, 1983 FR that it was deleting EPA form 8700–13B and its predecessor, EPA form 8700–13, which had appeared in the May 19, 1980 FR. Although both forms were linked to annual reporting requirements at that time and were supposed to be adapted for unmanifested waste reporting, we deleted them due to the change from annual to biennial reporting. We never published a new form for unmanifested waste reporting and the form now required for biennial reporting, EPA form 1300–A/B, ''Hazardous Waste Report Instructions and Forms,'' is not adaptable for unmanifested waste reporting. Although we never published a replacement form for reporting unmanifested waste, the regulations still required this form which is generally unavailable to those seeking a copy.

The final rule retains the proposed unmanifested reporting requirements at 40 CFR 264.76 and 265.76. Commenters generally supported our unmanifested reporting approach. However, several commenters expressed concern or raised suggestions on the proposed procedures for unmanifested wastes reports. A number of commenters suggested that EPA revise the manifest so that an unmanifested report could be ''unsubmitted'' using a manifest (*e.g.*, using a check box). While we appreciate this suggestion, EPA does not believe that it is a workable option. One commenter expressed concern that the proposed procedures did not offer a standard reporting approach, which could lead to data quality problems. The commenter suggested that TSDFs provide a report using company letterhead and signed by a company official. We do not agree with the suggestion and are not convinced that data entry problems may result from the proposed approach.

VI. Administration and Enforcement of These Regulatory Changes in the States

A. *Uniform Applicability of Revised Manifest Requirements in All States.* In

the May, 2001 proposed rule, EPA explained how the revised manifest requirements would apply in authorized states, in the context of the statutory and regulatory authorities that govern generally the authorization of state hazardous waste programs for revisions to EPA's Subtitle C regulations. However, the hazardous waste manifest is based on both RCRA authority and the hazardous materials statutes and regulations administered by DOT. As we explained when we issued the Uniform Manifest Rule in March, 1984, the joint RCRA/hazmat basis for the manifest gives rise to unique implementation consequences.

The most significant consequence of the joint RCRA/Hazmat authority for the manifest is that the revised manifest requirements announced in today's rule will be implemented in all states on the delayed compliance date of September 5, 2006. This result follows from the hazardous materials laws that require consistency in the use of hazardous materials shipping papers such as the manifest. Just as we indicated with respect to the applicability of the Uniform Manifest Rule (see 49 FR 10490 at 10493, March 20, 1984), EPA continues to believe that a uniform implementation date is an important part of the manifest system. Therefore, based again on the requirements in Hazmat law for consistency in the content and use of shipping papers, the revised manifest form and procedures announced in today's final rule will be implemented uniformly on September 5, 2006, regardless of any state's authorization status under RCRA. This means that, with one minor exception (the changes to the waste minimization certification requirements discussed below), implementation and enforcement of the revised manifest in authorized states will be based solely on federal hazmat law, rather than RCRA authority, until the states have obtained authorization for the program revisions included in today's rule.

The remainder of this section discusses the state authorization implications for today's revised manifest requirements. While the revised manifest will be implemented in all states under the hazardous materials authorities on the delayed compliance date, the revised manifest requirements will be implemented in the states as RCRA requirements as well, depending upon a state's authorization status and its progress in revising its laws and obtaining approval from EPA for these manifest program revisions.

B. *General Policy on RCRA Applicability of Federal Rules in Authorized States.* Under Section 3006 of RCRA, EPA may authorize qualified states to administer the RCRA hazardous waste program within the State. Following authorization, the State requirements authorized by EPA apply in lieu of the equivalent Federal RCRA requirements and become Federally enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA Sections 3007, 3008, 3013, and 7003. Authorized States also have independent authority to bring enforcement actions under State law. A State may receive authorization by following the approval process described under 40 CFR Part 271. See 40 CFR 271 for the overall standards and requirements for authorization.

After a State receives initial authorization, new Federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that State under RCRA authority until the State adopts and receives authorization for equivalent State requirements. The State must generally adopt such requirements to maintain authorization.

In contrast, under RCRA Section 3006(g) (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect under RCRA in authorized States at the same time that they take effect in unauthorized States. Although authorized States are still required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA-based requirements and prohibitions in authorized States, including the issuance of new permits implementing those requirements, until EPA authorizes the States to do so.

Authorized States generally are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA Section 3009 allows the States to impose standards more stringent than those in the Federal program. See also 40 CFR 271.1(i). Therefore, authorized States are generally not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent. However, as we explain below, the hazardous waste manifest is not governed by this policy, but is instead subject to special program consistency requirements which require all states to maintain consistency with the Federal manifest, regardless of whether any Federal changes could be considered more stringent or less stringent than existing requirements.

C. *Authorization of States for Today's Final Rule.* Except for one provision, we are promulgating today's final rule mainly under non-HSWA statutory authority. The section of today's rule that is promulgated under HSWA authority (specifically, RCRA Section 3002(b)) is § 262.27, which consists of the new regulatory provision that codifies the waste minimization certification language which previously was set out in full on the face of the manifest form itself. Therefore, we are adding this section of the rule to Table 1 in 40 CFR 271.1(j), which identifies all the Federal program requirements that are promulgated pursuant to the statutory authority that was added by HSWA. States may apply for final authorization for the HSWA provisions in Table 1, as discussed in the following section of this preamble.

EPA emphasizes that this rule's codification of the full waste minimization certification in § 262.27 is intended only for convenience, and is not intended as a substantive change to the manifest requirements. This final rule provision contains the same waste minimization certification language which is on the current manifest form, but which the revised form incorporates by reference to § 262.27. Generators are still required to certify to the same waste minimization statements they previously certified to each time a manifest is initiated, but much of the actual language now appears in the regulation rather than on the form.

Because Congress established the waste minimization certification requirement in the 1984 HSWA statute, EPA must designate any regulatory changes that affect the waste minimization certification as a HSWA-based regulatory revision and identify it as such in Table 1 of 40 CFR 271.1(j). Therefore, since § 262.27 is the only component of today's final rule that is based on HSWA authority, we are clarifying that only this provision will be implemented as a HSWA requirement. The impact of the HSWA designation is that the waste minimization requirements appearing in § 262.27 will be effective immediately under Federal RCRA authority in all authorized States, before the states become authorized for their equivalent requirements under state law. Thus, when new manifest forms which do not contain the full waste minimization certification are distributed, the full requirements for the waste minimization certification will continue to be in effect under Federal law, even if a state is delayed in adopting these

changes under its state law authorities. That is the only significant or practical outcome that results from this one regulatory provision being designated a HSWA-based requirement.

All the other parts of today's final rule are based on pre-HSWA authority, so they will be implemented under RCRA authority in authorized States only when these states revise their programs and receive authorization for the final rule requirements. For users of the manifest, the reliance on pre-HSWA authority for most of the content of today's rule is largely a moot point, since the new form and requirements will be implemented in all states on the delayed compliance date (i.e., 18 months after publication) based on Federal hazardous materials law. To regulatory agencies, the point is significant, since it means that the new manifest requirements cannot be implemented and thus enforced under RCRA authority until the states have received authorization for the necessary revisions to their authorized hazardous waste programs.

D. *Consistency Requires Adoption of Revised Manifest in All States.* Under today's rule, authorized States will be required to adopt the revised Uniform Manifest form and requirements. To obtain and maintain authorization, States and territories are required to be consistent with the federal program and other State programs. Although sections 3006 and 3009 of RCRA allow States to have regulations that are different than the Federal requirements, as long as they are equivalent to or more stringent, section 3006(b) also requires States to have regulations that are consistent with the federal regulations. The requirements of this statutory provision are codified in 40 CFR 271.4, which specifically applies the consistency requirement to the manifest system under 40 CFR 271.4(c). When EPA originally promulgated the Uniform Manifest in 1984, we found that consistency was extremely important where requirements addressing transportation are concerned. We found during the early years of implementing the RCRA program that a proliferation of many State-specific manifest forms could hamper the movement of hazardous waste to waste management facilities, and that differing manifest use and information requirements between States caused added burdens and confusion among those trying to comply with the Subtitle C regulations. See 49 FR 10490 at 10491 (March 20, 1984). Therefore, in 1984, EPA announced that consistency in the use of the Uniform Manifest would be required from authorized States, and that, with the exception of the limited State information that was allowed then in the optional fields, authorized States could not require any other manifest or information to accompany a waste shipment. Id. Based on nearly 20 years of experience with the Uniform Manifest, EPA has concluded that variability in the current manifest system must be reduced further, since the current level of variability under the 1984 Uniform Manifest continues to produce excessive burden, confusion, and compliance problems. Therefore, EPA emphasizes that program consistency considerations under RCRA section 3006 and 40 CFR 271.4(c) demand that all authorized States must require the use of the revised manifest form and requirements as set out in today's final rule.

Under 40 CFR 271.4(c) and 271.10(f) and (h), in order to be consistent with the federal program, and receive approval from EPA, States must have a manifest system that includes a manifest format that follows the Federal format required in 40 CFR 262.20(a) and 262.21. Today's rule amends § 271.10(h) to correspond with the changes to the revised manifest format and the procedures for its use. Key among these amendments are form revisions that would eliminate all optional fields and establish a new procedure for obtaining a standard manifest form from registered printers or distributors. The new, standard manifest format and the corresponding federal printing specification will not provide areas of potential variability for users and states. The final rule thus amends § 271.10(h) to eliminate provisions addressing States' ability to supplement the form. The States will, however, retain the authority to require the entry of state-specific waste codes that are not redundant with federal codes, and the authority to require the submission of manifest copies to state offices for use in their data systems.

Because the revised uniform manifest is (except for § 262.27 as explained above) being promulgated pursuant to non-HSWA authority, it will not become effective as a RCRA requirement in authorized States until those States revise their programs and receive authorization.

EPA has involved the authorized States, as co-implementers of the RCRA program, in the development of today's rule. We believe that there is general support among the States for these manifest revisions that will result in a truly standardized manifest form. EPA also believes that the States will generally be able to revise their RCRA programs to include the revised manifest within the final rule's transition period. However, should any states experience delays in adopting the program revisions corresponding to today's rule, we emphasize that the revised form and requirements will apply uniformly in all states on this rule's delayed compliance date, under the authority of the federal hazardous materials laws. Thus, any delays at the state level in adopting state program revisions will not impair the ability of users to obtain the benefits of the new form, nor impede the accomplishment of a truly standardized manifest form.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order No. 12866 (58 FR 51735, October 4, 1993), Federal agencies must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may: ''(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or, (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

Pursuant to the terms of Executive Order 12866, we determined that this rule is a ''significant regulatory action'' because it contains novel policy issues, although it is not economically significant. As such, this action was submitted to the Office of Management and Budget (OMB) for review. Changes made in response to OMB suggestions or recommendations are documented in the docket for today's rule.

In order to estimate the anticipated economic effects of today's final rule, we conducted an evaluation of the potential effects of this rule on hazardous waste handlers and on State government regulatory agencies: ''Economics Background Document: Economic Analysis of the USEPA's Final Rule Revisions to the RCRA Hazardous Waste Manifest Form,'' Mark

Eads, Office of Solid Waste, 24 November 2004, 67 pages (available to the public from the EPA Docket at *http://www.epa.gov/edocket*).

We estimate that upwards of 139,000 facilities in the United States generate, transport or manage (i.e. treat, recycle, store, dispose) RCRA hazardous waste. About 12 million tons of hazardous waste (non-wastewaters and wastewaters) per year are manifested for shipment (i.e. transport by truck, rail or barge), involving 2.4 to 5.1 million hazardous waste shipment manifests for off-site management annually, requiring about 4.4 to 9.2 million waste handler labor hours, costing about $187 to $733 million annually. In addition, twenty-three state governments reportedly spend 199,000 to 416,000 labor hours costing $6.3 to $37 million annually to administer the current RCRA hazardous waste manifest program, which when added to waste handler burden, totals to 4.6 to 9.7 million hours ($193 to $770 million) per year in baseline national paperwork burden.

Relative to this paperwork burden baseline, we estimate that today's final rule revisions to the RCRA manifest form and acquisition, are expected to produce a national total of $12.7 to $20.6 million in average annual paperwork burden reduction benefits associated with a reduction of 249,000 to 397,000 annual burden hours. This represents a 4% to 5% burden hour reduction compared to the national burden hour baseline of 4.6 to 9.7 million hours as estimated in the ''Economics Background Document'' (EBD). In comparison to these burden estimates, the next section presents an alternative estimate of baseline paperwork burden and expected burden reduction for today's final rule, based on OMB's ''Information Collection Request'' (ICR) paperwork burden estimation method. The ICR burden estimation method purposedly excludes manifest burden to Federal facilities and excludes manifest burden for state-only regulated hazardous wastes, whereas the burden estimates of the EBD include manifest burden to both Federal facilities and non-Federal facilities, as well as paperwork burden associated with manifesting both RCRA-regulated and state-only regulated hazardous wastes. Consequently, the burden hour estimates in the next section are less than the estimates presented above in this section.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

According to the estimates provided in the 2004 ICR Nr. 801.15 Supporting Statement for this final rule (available from the EPA Docket at http://www.epa.gov/edocket), EPA expects today's final rule revisions to the RCRA manifest form to produce an average annual net reduction of 375,000 hours in paperwork burden to RCRA hazardous waste handlers and to state governments. This expected burden reduction represents a 12% reduction in annual burden hours compared to the ICR baseline burden of 3.2 million hours per year (note that this baseline burden estimate is less than the baseline estimate of the ''Economics Background Document'' (EBD) summarized in the previous section, because the ICR methodology excludes manifest burden associated with Federal facilities and state-only hazardous wastes, and does not include the EBD's alternative upper-bound estimate of annual manifests).

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

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is defined by the Small Business Administration by category of business using North America Industrial Classification System (NAICS) and codified at 13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

Today's final rule includes both regulatory and deregulatory features. However, the net effect of these changes should reduce, not increase, the paperwork and related burdens of the RCRA hazardous waste manifest. For businesses in general, including all small businesses, the changes in the RCRA manifest form, although required, are designed to reduce the long-term labor time and other costs of acquiring, completing, and submitting hazardous waste manifests. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

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

This final rule does not include a Federal mandate that may result in expenditures of $100 million or more to State, local, or tribal governments in the aggregate, because the UMRA generally excludes from the definition of ''Federal intergovernmental mandate'' duties that arise from participation in a voluntary federal program. States are not legally required to have or maintain a RCRA authorized program. Therefore, today's final rule is not subject to the requirements of sections 202 or 205 of UMRA. Furthermore, public data sources we reviewed in 2003 indicate that 12 state governments (AR, CA, CT, DE, IL, LA, MD, MI, MO, NH, NJ, PA) collect revenues from direct assessment of fees during distribution of state-printed RCRA manifests, totaling an estimated $1.16 to $2.44 million per year (see ''Economics Background Document'' for basis of this estimate). However, more recently as 2004, we estimate there may only be seven states collecting manifest printing and distribution fees. Today's rule will override existing requirements for hazardous waste shippers to acquire state-printed RCRA manifests and thus reduce the existing direct fee assessment mechanism in these 7 to 12 states. In cases where states lose revenue as a result of this rule, they may reconfigure their hazardous waste manifest fee assessments to maintain these existing annual revenues such as by charging fees to process collected manifests, or by altering waste management fee mechanisms. In addition, this final rule contains no regulatory requirements that might significantly or uniquely affect small governments under section 203 of UMRA. Therefore, EPA does not believe that this final rule would have a significant or unique effect on small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires Federal agencies 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.'' The Executive Order defines ''policies that have federalism implications'' to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

The final rule would alter the information that a State may require a generator or transporter to submit on the Uniform Manifest, and it would also alter the States' current role in distributing manifests. However, these changes represent relatively minor adjustments to the current manifest system, and they do not alter substantially the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. The manifest would remain a tracking document and shipping paper that is primarily based on Federal requirements found in RCRA and in the hazardous materials transportation laws administered by DOT. As with existing hazardous waste manifest requirements, States would retain the authority to require generators and treatment, storage, and disposal facilities to provide additional information related to the hazardous waste shipment under separate cover, so long as such requirements are not inconsistent with the Hazardous Materials Transportation Act (HMTA) or HMTA regulations.

In addition, the final rule does not impose substantial direct costs on States and localities. Although States with manifest data tracking programs may incur some start-up costs in converting their tracking systems to accept the revised paper manifest, the final rule does not mandate that States collect manifests, as a part of their programs. Thus, Executive Order 13132 does not apply to this final rule.

Although Section Six of Executive Order 13132 does not apply to this rule, EPA consulted substantially with representatives of State government in developing this rule prior to finalization. The Agency invited State representatives to participate in two public meetings during which we presented our rulemaking objectives and strategies, and solicited comments and concerns. EPA conducted these public meetings on December 10–11, 1997, and on January 7–8, 1998. Representatives of 23 States and Territories participated in these meetings. In addition, State representatives were invited to participate in the meetings of the EPA work group which developed this rule. Representatives from five States (IN, MI, NH, PA and RI) were selected to participate in the work group meetings, and these States discussed rule options and draft rule language extensively with EPA throughout the development of both the proposed and final rules.

During our consultations with States on this rule, the State representatives identified several concerns about: (1) The reductions in the optional fields which States have used to require additional information from facilities; and (2) the changes for printing and acquiring manifests. A summary of the concerns raised during consultations with the States, and EPA's response to those concerns, is provided elsewhere in this preamble, as well as in our ''Response to Comments'' document (available to the public from the EPA Docket).

F. Executive Order 13175: Consultation With Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

This final rule does not have tribal implications, as specified in Executive Order 13175. It does not impose any new requirements on tribal officials nor does it impose substantial direct compliance costs on them. This rule does not create a mandate for tribal governments, nor does it impose any enforceable duties on these entities. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children—Applicability of Executive Order 13045

The Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered.

This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. In addition, the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children, because the RCRA manifest does not itself give rise to environmental media transfer issues. The manifest serves as a tracking device which creates clear lines of accountability among the participants in the hazardous waste manifest system. It also serves to protect human health and the environment during the transportation of hazardous waste by providing information about the waste to persons handling the waste and to emergency response personnel.

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

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This final rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A Major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective September 6, 2005.

List of Subjects

40 CFR Part 260

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 263

Environmental protection, Hazardous materials transportation, Hazardous waste.

40 CFR Part 264

Environmental protection, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements, Security measures.

40 CFR Part 265

Environmental protection, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements.

Dated: January 27, 2005.

Stephen L. Johnson,

Acting Administrator.

■ For the reasons stated in the preamble, title 40, chapter 1 of the Code of Federal Regulations is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

■ 2. Section 260.10 is amended by removing the definition of ''Manifest document number,'' by revising the definitions of ''Designated facility'' and ''Manifest,'' and by adding the definition of ''Manifest tracking number'' in alphabetical order to read as follows:

§ 260.10 Definitions.

* * * * *

Designated facility means:

(1) A hazardous waste treatment, storage, or disposal facility which:

(i) Has received a permit (or interim status) in accordance with the

requirements of parts 270 and 124 of this chapter;

(ii) Has received a permit (or interim status) from a State authorized in accordance with part 271 of this chapter; or

(iii) Is regulated under § 261.6(c)(2) or subpart F of part 266 of this chapter; and

(iv) That has been designated on the manifest by the generator pursuant to § 262.20.

(2) *Designated facility* also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with § 264.72(f) or § 265.72(f) of this chapter.

(3) If a waste is destined to a facility in an authorized State which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving State to accept such waste.

* * * * *

Manifest means: The shipping document EPA Form 8700–22 (including, if necessary, EPA Form 8700–22A), originated and signed by the generator or offeror in accordance with the instructions in the appendix to 40 CFR part 262 and the applicable requirements of 40 CFR parts 262 through 265.

Manifest tracking number means: The alphanumeric identification number (*i.e.*, a unique three letter suffix preceded by nine numerical digits), which is pre-printed in Item 4 of the Manifest by a registered source.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

Subpart A—General

■ 4. Section 261.7 is amended by revising paragraph (b)(1)(iii) to read as follows:

§ 261.7 Residues of hazardous waste in empty containers.

* * * * *

(b)(1) * * *

(iii)(A) No more than 3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 119 gallons in size; or

(B) No more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 119 gallons in size.

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 5. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

Subpart B—The Manifest

■ 6. Section 262.20 (a) is revised to read as follows:

§ 262.20 General requirements.

(a)(1) A generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, must prepare a Manifest (OMB Control number 2050–0039) on EPA Form 8700–22, and, if necessary, EPA Form 8700–22A, according to the instructions included in the appendix to this part.

(2) The revised Manifest form and procedures in 40 CFR 260.10, 261.7, 262.20, 262.21, 262.27, 262.32, 262.33, 262.34, 262.54, 262.60, and the appendix to part 262, shall not apply until September 5, 2006. The Manifest form and procedures in 40 CFR 260.10, 261.7, 262.20, 262.21, 262.32, 262.33, 262.34, 262.54, 262.60, and the appendix to part 262, contained in the 40 CFR, parts 260 to 265, edition revised as of July 1, 2004, shall be applicable until September 5, 2006.

* * * * *

■ 7. Section 262.21 is revised (including the Section heading) to read as follows:

§ 262.21 Manifest tracking numbers, manifest printing, and obtaining manifests.

(a)(1) A registrant may not print, or have printed, the manifest for use or distribution unless it has received approval from the EPA Director of the Office of Solid Waste to do so under paragraphs (c) and (e) of this section.

(2) The approved registrant is responsible for ensuring that the organizations identified in its application are in compliance with the procedures of its approved application and the requirements of this section. The registrant is responsible for assigning manifest tracking numbers to its manifests.

(b) A registrant must submit an initial application to the EPA Director of the Office of Solid Waste that contains the following information:

(1) Name and mailing address of registrant;

(2) Name, telephone number and email address of contact person;

(3) Brief description of registrant's government or business activity;

(4) EPA identification number of the registrant, if applicable;

(5) Description of the scope of the operations that the registrant plans to undertake in printing, distributing, and using its manifests, including:

(i) A description of the printing operation. The description should include an explanation of whether the registrant intends to print its manifests in-house (*i.e.*, using its own printing establishments) or through a separate (*i.e.*, unaffiliated) printing company. If the registrant intends to use a separate printing company to print the manifest on its behalf, the application must identify this printing company and discuss how the registrant will oversee the company. If this includes the use of intermediaries (*e.g.*, prime and subcontractor relationships), the role of each must be discussed. The application must provide the name and mailing address of each company. It also must provide the name and telephone number of the contact person at each company.

(ii) A description of how the registrant will ensure that its organization and unaffiliated companies, if any, comply with the requirements of this section. The application must discuss how the registrant will ensure that a unique manifest tracking number will be pre-printed on each manifest. The application must describe the internal control procedures to be followed by the registrant and unaffiliated companies to ensure that numbers are tightly controlled and remain unique. In particular, the application must describe how the registrant will assign manifest tracking numbers to its manifests. If computer systems or other infrastructure will be used to maintain, track, or assign numbers, these should be indicated. The application must also indicate how the printer will pre-print a unique number on each form (*e.g.*, crash or press numbering). The application also must explain the other quality procedures to be followed by each establishment and printing company to ensure that all required print specifications are consistently achieved and that printing violations are identified and corrected at the earliest practicable time.

(iii) An indication of whether the registrant intends to use the manifests for its own business operations or to distribute the manifests to a separate company or to the general public (*e.g.*, for purchase).

(6) A brief description of the qualifications of the company that will print the manifest. The registrant may use readily available information to do so (*e.g.*, corporate brochures, product samples, customer references, documentation of ISO certification), so long as such information pertains to the establishments or company being proposed to print the manifest.

(7) Proposed unique three-letter manifest tracking number suffix. If the registrant is approved to print the manifest, the registrant must use this suffix to pre-print a unique manifest tracking number on each manifest.

(8) A signed certification by a duly authorized employee of the registrant that the organizations and companies in its application will comply with the procedures of its approved application and the requirements of this Section and that it will notify the EPA Director of the Office of Solid Waste of any duplicated manifest tracking numbers on manifests that have been used or distributed to other parties as soon as this becomes known.

(c) EPA will review the application submitted under paragraph (b) of this section and either approve it or request additional information or modification before approving it.

(d)(1) Upon EPA approval of the application under paragraph (c) of this section, EPA will provide the registrant an electronic file of the manifest, continuation sheet, and manifest instructions and ask the registrant to submit three fully assembled manifests and continuation sheet samples, except as noted in paragraph (d)(3) of this section. The registrant's samples must meet all of the specifications in paragraph (f) of this section and be printed by the company that will print the manifest as identified in the application approved under paragraph (c) of this section.

(2) The registrant must submit a description of the manifest samples as follows:

(i) Paper type (*i.e.*, manufacturer and grade of the manifest paper);

(ii) Paper weight of each copy;

(iii) Ink color of the manifest's instructions. If screening of the ink was used, the registrant must indicate the extent of the screening; and

(iv) Method of binding the copies.

(3) The registrant need not submit samples of the continuation sheet if it will print its continuation sheet using the same paper type, paper weight of each copy, ink color of the instructions, and binding method as its manifest form samples.

(e) EPA will evaluate the forms and either approve the registrant to print them as proposed or request additional information or modification to them before approval. EPA will notify the registrant of its decision by mail. The registrant cannot use or distribute its forms until EPA approves them. An approved registrant must print the manifest and continuation sheet according to its application approved under paragraph (c) of this section and the manifest specifications in paragraph (f) of this section. It also must print the forms according to the paper type, paper weight, ink color of the manifest instructions and binding method of its approved forms.

(f) Paper manifests and continuation sheets must be printed according to the following specifications:

(1) The manifest and continuation sheet must be printed with the exact format and appearance as EPA Forms 8700–22 and 8700–22A, respectively. However, information required to complete the manifest may be pre-printed on the manifest form.

(2) A unique manifest tracking number assigned in accordance with a numbering system approved by EPA must be pre-printed in Item 4 of the manifest. The tracking number must consist of a unique three-letter suffix following nine digits.

(3) The manifest and continuation sheet must be printed on 8½ x 11-inch white paper, excluding common stubs (*e.g.*, top- or side-bound stubs). The paper must be durable enough to withstand normal use.

(4) The manifest and continuation sheet must be printed in black ink that can be legibly photocopied, scanned, and faxed, except that the marginal words indicating copy distribution must be in red ink.

(5) The manifest and continuation sheet must be printed as six-copy forms. Copy-to-copy registration must be exact within 1/32nd of an inch. Handwritten and typed impressions on the form must be legible on all six copies. Copies must be bound together by one or more common stubs that reasonably ensure that they will not become detached inadvertently during normal use.

(6) Each copy of the manifest and continuation sheet must indicate how the copy must be distributed, as follows:

(i) Page 1 (top copy): ''Designated facility to destination State (if required)''.

(ii) Page 2: ''Designated facility to generator State (if required)''.

(iii) Page 3: ''Designated facility to generator''.

(iv) Page 4: ''Designated facility's copy''.

(v) Page 5: ''Transporter's copy''.

(vi) Page 6 (bottom copy): ''Generator's initial copy''.

(7) The instructions in the appendix to 40 CFR part 262 must appear legibly on the back of the copies of the manifest and continuation sheet as provided in this paragraph (f). The instructions must not be visible through the front of the copies when photocopied or faxed.

(i) Manifest Form 8700–22.

(A) The ''Instructions for Generators'' on Copy 6;

(B) The ''Instructions for International Shipment Block'' and ''Instructions for Transporters'' on Copy 5; and

(C) The ''Instructions for Treatment, Storage, and Disposal Facilities'' on Copy 4.

(ii) Manifest Form 8700–22A.

(A) The ''Instructions for Generators'' on Copy 6;

(B) The ''Instructions for Transporters'' on Copy 5; and

(C) The ''Instructions for Treatment, Storage, and Disposal Facilities'' on Copy 4.

(g)(1) A generator may use manifests printed by any source so long as the source of the printed form has received approval from EPA to print the manifest under paragraphs (c) and (e) of this section. A registered source may be a:

(i) State agency;

(ii) Commercial printer;

(iii) Hazardous waste generator, transporter or TSDF; or

(iv) Hazardous waste broker or other preparer who prepares or arranges shipments of hazardous waste for transportation.

(2) A generator must determine whether the generator state or the consignment state for a shipment regulates any additional wastes (beyond those regulated Federally) as hazardous wastes under these states' authorized programs. Generators also must determine whether the consignment state or generator state requires the generator to submit any copies of the manifest to these states. In cases where the generator must supply copies to either the generator's state or the consignment state, the generator is responsible for supplying legible photocopies of the manifest to these states.

(h)(1) If an approved registrant would like to update any of the information provided in its application approved under paragraph (c) of this section (*e.g.*, to update a company phone number or name of contact person), the registrant must revise the application and submit it to the EPA Director of the Office of Solid Waste, along with an indication or explanation of the update, as soon as practicable after the change occurs. The Agency either will approve or deny the

revision. If the Agency denies the revision, it will explain the reasons for the denial, and it will contact the registrant and request further modification before approval.

(2) If the registrant would like a new tracking number suffix, the registrant must submit a proposed suffix to the EPA Director of the Office of Solid Waste, along with the reason for requesting it. The Agency will either approve the suffix or deny the suffix and provide an explanation why it is not acceptable.

(3) If a registrant would like to change the paper type, paper weight, ink color of the manifest instructions, or binding method of its manifest or continuation sheet subsequent to approval under paragraph (e) of this section, then the registrant must submit three samples of the revised form for EPA review and approval. If the approved registrant would like to use a new printer, the registrant must submit three manifest samples printed by the new printer, along with a brief description of the printer's qualifications to print the manifest. EPA will evaluate the manifests and either approve the registrant to print the forms as proposed or request additional information or modification to them before approval. EPA will notify the registrant of its decision by mail. The registrant cannot use or distribute its revised forms until EPA approves them.

(i) If, subsequent to its approval under paragraph (e) of this section, a registrant typesets its manifest or continuation sheet instead of using the electronic file of the forms provided by EPA, it must submit three samples of the manifest or continuation sheet to the registry for approval. EPA will evaluate the manifests or continuation sheets and either approve the registrant to print them as proposed or request additional information or modification to them before approval. EPA will notify the registrant of its decision by mail. The registrant cannot use or distribute its typeset forms until EPA approves them.

(j) EPA may exempt a registrant from the requirement to submit form samples under paragraph (d) or (h)(3) of this section if the Agency is persuaded that a separate review of the registrant's forms would serve little purpose in informing an approval decision (*e.g.*, a registrant certifies that it will print the manifest using the same paper type, paper weight, ink color of the instructions and binding method of the form samples approved for some other registrant). A registrant may request an exemption from EPA by indicating why an exemption is warranted.

(k) An approved registrant must notify EPA by phone or email as soon as it becomes aware that it has duplicated tracking numbers on any manifests that have been used or distributed to other parties.

(l) If, subsequent to approval of a registrant under paragraph (e) of this section, EPA becomes aware that the approved paper type, paper weight, ink color of the instructions, or binding method of the registrant's form is unsatisfactory, EPA will contact the registrant and require modifications to the form.

(m)(1) EPA may suspend and, if necessary, revoke printing privileges if we find that the registrant:

(i) Has used or distributed forms that deviate from its approved form samples in regard to paper weight, paper type, ink color of the instructions, or binding method; or

(ii) Exhibits a continuing pattern of behavior in using or distributing manifests that contain duplicate manifest tracking numbers.

(2) EPA will send a warning letter to the registrant that specifies the date by which it must come into compliance with the requirements. If the registrant does not come in compliance by the specified date, EPA will send a second letter notifying the registrant that EPA has suspended or revoked its printing privileges. An approved registrant must provide information on its printing activities to EPA if requested.

Subpart B—[Amended]

■ 8. Subpart B is amended by adding new § 262.27 to read as follows:

§ 262.27 Waste minimization certification.

A generator who initiates a shipment of hazardous waste must certify to one of the following statements in Item 15 of the uniform hazardous waste manifest:

(a) ''I am a large quantity generator. I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of treatment, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment;'' or

(b) ''I am a small quantity generator. I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford.''

Subpart C—Pre-Transport Requirements

■ 9. Section 262.32 is amended by revising paragraph (b) to read as follows:

§ 262.32 Marking.

* * * * *

(b) Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must mark each container of 119 gallons or less used in such transportation with the following words and information in accordance with the requirements of 49 CFR 172.304:

HAZARDOUS WASTE—Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

Generator's Name and Address _____.
Generator's EPA Identification Number _____.
Manifest Tracking Number _____.

■ 10. Section 262.33 is revised to read as follows:

§ 262.33 Placarding.

Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 CFR part 172, subpart F. If placards are not required, a generator must mark each motor vehicle according to 49 CFR 171.3(b)(1).

■ 11. Section 262.34 is amended by adding new paragraph (m) to read as follows:

§ 262.34 Accumulation time.

* * * * *

(m) A generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of § 264.72 or § 265.72 of this chapter may accumulate the returned waste on-site in accordance with paragraphs (a) and (b) or (d), (e) and (f) of this section, depending on the amount of hazardous waste on-site in that calendar month. Upon receipt of the returned shipment, the generator must:

(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

Subpart E—Exports of Hazardous Waste

■ 12. Section 262.54 is amended by revising paragraphs (c) and (e) to read as follows:

§ 262.54 Special manifest requirements.

* * * * *

(c) In the International Shipments block, the primary exporter must check the export box and enter the point of exit (city and State) from the United States.

* * * * *

(e) The primary exporter may obtain the manifest from any source that is registered with the U.S. EPA as a supplier of manifests (*e.g.*, states, waste handlers, and/or commercial forms printers).

* * * * *

Subpart F—Imports of Hazardous Waste

■ 13. Section 262.60 is amended by revising paragraph (c) and by adding paragraphs (d) and (e) to read as follows:

§ 262.60 Imports of hazardous waste.

* * * * *

(c) A person who imports hazardous waste may obtain the manifest form from any source that is registered with the U.S. EPA as a supplier of manifests (*e.g.*, states, waste handlers, and/or commercial forms printers).

(d) In the International Shipments block, the importer must check the import box and enter the point of entry (city and State) into the United States.

(e) The importer must provide the transporter with an additional copy of the manifest to be submitted by the receiving facility to U.S. EPA in accordance with § 264.71(a)(3) and § 265.71(a)(3) of this chapter.

■ 14. The Appendix to Part 262 is revised to read as follows:

Appendix to Part 262—Uniform Hazardous Waste Manifest and Instructions (EPA Forms 8700–22 and 8700–22A and Their Instructions)

U.S. EPA Form 8700–22

Read all instructions before completing this form.

1. This form has been designed for use on a 12-pitch (elite) typewriter which is also compatible with standard computer printers; a firm point pen may also be used—press down hard.

2. Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, and disposal facilities to complete this form (8700–22) and, if necessary, the continuation sheet (8700–22A) for both inter- and intrastate transportation of hazardous waste.

Manifest 8700–22

The following statement must be included with each Uniform Hazardous Waste Manifest, either on the form, in the instructions to the form, or accompanying the form:

Public reporting burden for this collection of information is estimated to average: 30 minutes for generators, 10 minutes for transporters, and 25 minutes for owners or operators of treatment, storage, and disposal facilities. This includes time for reviewing instructions, gathering data, completing, reviewing and transmitting the form. Send comments regarding the burden estimate, including suggestions for reducing this burden, to: Chief, Information Policy Branch (2136), U.S. Environmental Protection Agency, Ariel Rios Building; 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Instructions for Generators

Item 1. Generator's U.S. EPA Identification Number

Enter the generator's U.S. EPA twelve digit identification number, or the State generator identification number if the generator site does not have an EPA identification number.

Item 2. Page 1 of __

Enter the total number of pages used to complete this Manifest (*i.e.*, the first page (EPA Form 8700–22) plus the number of Continuation Sheets (EPA Form 8700–22A), if any).

Item 3. Emergency Response Phone Number

Enter a phone number for which emergency response information can be obtained in the event of an incident during transportation. The emergency response phone number must:

1. Be the number of the generator or the number of an agency or organization who is capable of and accepts responsibility for providing detailed information about the shipment;

2. Reach a phone that is monitored 24 hours a day at all times the waste is in transportation (including transportation related storage); and

3. Reach someone who is either knowledgeable of the hazardous waste being shipped and has comprehensive emergency response and spill cleanup/incident mitigation information for the material being shipped or has immediate access to a person who has that knowledge and information about the shipment.

Note: Emergency Response phone number information should only be entered in Item 3 when there is one phone number that applies to all the waste materials described in Item 9b. If a situation (*e.g.*, consolidated shipments) arises where more than one Emergency Response phone number applies to the various wastes listed on the manifest, the phone numbers associated with each specific material should be entered after its description in Item 9b.

Item 4. Manifest Tracking Number

This unique tracking number must be pre-printed on the manifest by the forms printer.

Item 5. Generator's Mailing Address, Phone Number and Site Address

Enter the name of the generator, the mailing address to which the completed manifest signed by the designated facility should be mailed, and the generator's telephone number. Note, the telephone number (including area code) should be the number where the generator or his authorized agent may be reached to provide instructions in the event of an emergency or if the designated and/or alternate (if any) facility rejects some or all of the shipment. Also enter the physical site address from which the shipment originates only if this address is different than the mailing address.

Item 6. Transporter 1 Company Name, and U.S. EPA ID Number

Enter the company name and U.S. EPA ID number of the first transporter who will transport the waste. Vehicle or driver information may not be entered here.

Item 7. Transporter 2 Company Name and U.S. EPA ID Number

If applicable, enter the company name and U.S. EPA ID number of the second transporter who will transport the waste. Vehicle or driver information may not be entered here.

If more than two transporters are needed, use a Continuation Sheet(s) (EPA Form 8700–22A).

Item 8. Designated Facility Name, Site Address, and U.S. EPA ID Number

Enter the company name and site address of the facility designated to receive the waste listed on this manifest. Also enter the facility's phone number and the U.S. EPA twelve digit identification number of the facility.

Item 9. U.S. DOT Description (Including Proper Shipping Name, Hazard Class or Division, Identification Number, and Packing Group)

Item 9a. If the wastes identified in Item 9b consist of both hazardous and nonhazardous materials, then identify the hazardous materials by entering an ''X'' in this Item next to the corresponding hazardous material identified in Item 9b.

Item 9b. Enter the U.S. DOT Proper Shipping Name, Hazard Class or Division, Identification Number (UN/NA) and Packing Group for each waste as identified in 49 CFR 172. Include technical name(s) and reportable quantity references, if applicable.

Note: If additional space is needed for waste descriptions, enter these additional descriptions in Item 27 on the Continuation Sheet (EPA Form 8700–22A). Also, if more than one Emergency Response phone number applies to the various wastes described in either Item 9b or Item 27, enter applicable Emergency Response phone numbers immediately following the shipping descriptions for those Items.

Item 10. Containers (Number and Type)

Enter the number of containers for each waste and the appropriate abbreviation from Table I (below) for the type of container.

TABLE I.—TYPES OF CONTAINERS

BA = Burlap, cloth, paper, or plastic bags.
CF = Fiber or plastic boxes, cartons, cases.
CM = Metal boxes, cartons, cases (including roll-offs).
CW = Wooden boxes, cartons, cases.
CY = Cylinders.
DF = Fiberboard or plastic drums, barrels, kegs.
DM = Metal drums, barrels, kegs.
DT = Dump truck.
DW = Wooden drums, barrels, kegs.
HG = Hopper or gondola cars.
TC = Tank cars.
TP = Portable tanks.
TT = Cargo tanks (tank trucks).

Item 11. Total Quantity

Enter, in designated boxes, the total quantity of waste. Round partial units to the nearest whole unit, and *do not* enter decimals or fractions. To the extent practical, report quantities using appropriate units of measure that will allow you to report quantities with precision. Waste quantities entered should be based on actual measurements or reasonably accurate estimates of actual quantities shipped. Container capacities are not acceptable as estimates.

Item 12. Units of Measure (Weight/Volume)

Enter, in designated boxes, the appropriate abbreviation from Table II (below) for the unit of measure.

TABLE II.—UNITS OF MEASURE

G = Gallons (liquids only).
K = Kilograms.
L = Liters (liquids only).
M = Metric Tons (1000 kilograms).
N = Cubic Meters.
P = Pounds.
T = Tons (2000 pounds).
Y = Cubic Yards.

Note: Tons, Metric Tons, Cubic Meters, and Cubic Yards should only be reported in connection with very large bulk shipments, such as rail cars, tank trucks, or barges.

Item 13. Waste Codes

Enter up to six federal and state waste codes to describe each waste stream identified in Item 9b. State waste codes that are not redundant with federal codes must be entered here, in addition to the federal waste codes which are most representative of the properties of the waste.

Item 14. Special Handling Instructions and Additional Information.

1. Generators may enter any special handling or shipment-specific information necessary for the proper management or tracking of the materials under the generator's or other handler's business processes, such as waste profile numbers, container codes, bar codes, or response guide numbers. Generators also may use this space to enter additional descriptive information about their shipped materials, such as chemical names, constituent percentages, physical state, or specific gravity of wastes identified with volume units in Item 12.

2. This space may be used to record limited types of federally required information for which there is no specific space provided on the manifest, including any alternate facility designations; the manifest tracking number of the original manifest for rejected wastes and residues that are re-shipped under a second manifest; and the specification of PCB waste descriptions and PCB out-of-service dates required under 40 CFR 761.207. Generators, however, cannot be required to enter information in this space to meet state regulatory requirements.

Item 15. Generator's/Offeror's Certifications

1. The generator must read, sign, and date the waste minimization certification statement. In signing the waste minimization certification statement, those generators who have not been exempted by statute or regulation from the duty to make a waste minimization certification under section 3002(b) of RCRA are also certifying that they have complied with the waste minimization requirements. The Generator's Certification also contains the required attestation that the shipment has been properly prepared and is in proper condition for transportation (the shipper's certification). The content of the shipper's certification statement is as follows: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national governmental regulations. When a party other than the generator prepares the shipment for transportation, this party may also sign the shipper's certification statement as the offeror of the shipment.

2. Generator or Offeror personnel may preprint the words, ''On behalf of'' in the signature block or may hand write this statement in the signature block prior to signing the generator/offeror certification, to indicate that the individual signs as the employee or agent of the named principal.

Note: All of the above information except the handwritten signature required in Item 15 may be pre-printed.

II. Instructions for International Shipment Block

Item 16. International Shipments

For export shipments, the primary exporter must check the export box, and enter the point of exit (city and state) from the United States. For import shipments, the importer must check the import box and enter the point of entry (city and state) into the United States. For exports, the transporter must sign and date the manifest to indicate the day the shipment left the United States. Transporters of hazardous waste shipments must deliver a copy of the manifest to the U.S. Customs when exporting the waste across U.S. borders.

III. Instructions for Transporters

Item 17. Transporters' Acknowledgments of Receipt

Enter the name of the person accepting the waste on behalf of the first transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt. Only one signature per transportation company is required. Signatures are not required to track the movement of wastes in and out of transfer facilities, unless there is a change of custody between transporters.

If applicable, enter the name of the person accepting the waste on behalf of the second transporter. That person must acknowledge acceptance of the waste described on the manifest by signing and entering the date of receipt.

Note: Transporters carrying imports, who are acting as importers, may have responsibilities to enter information in the International Shipments Block. Transporters carrying exports may also have responsibilities to enter information in the International Shipments Block. See above instructions for Item 16.

IV. Instructions for Owners and Operators of Treatment, Storage, and Disposal Facilities

Item 18. Discrepancy

Item 18a. Discrepancy Indication Space

1. The authorized representative of the designated (or alternate) facility's owner or operator must note in this space any discrepancies between the waste described on the Manifest and the waste actually received at the facility. Manifest discrepancies are: significant differences (as defined by §§ 264.72(b) and 265.72(b)) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives, rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept, or container residues, which are residues that exceed the quantity limits for ''empty'' containers set forth in 40 CFR 261.7(b).

2. For rejected loads and residues (40 CFR 264.72(d), (e), and (f), or 40 CFR 265.72(d), (e), or (f)), check the appropriate box if the shipment is a rejected load (*i.e.*, rejected by the designated and/or alternate facility and is sent to an alternate facility or returned to the generator) or a regulated residue that cannot be removed from a container. Enter the reason for the rejection or the inability to remove the residue and a description of the waste. Also, reference the manifest tracking number for any additional manifests being used to track the rejected waste or residue shipment on the original manifest. Indicate the original manifest tracking number in Item 14, the Special Handling Block and Additional Information Block of the additional manifests.

3. Owners or operators of facilities located in unauthorized States (*i.e.*, states in which the U.S. EPA administers the hazardous waste management program) who cannot resolve significant differences in quantity or type within 15 days of receiving the waste

must submit to their Regional Administrator a letter with a copy of the Manifest at issue describing the discrepancy and attempts to reconcile it (40 CFR 264.72(c) and 265.72(c)).

4. Owners or operators of facilities located in authorized States (*i.e.*, those States that have received authorization from the U.S. EPA to administer the hazardous waste management program) should contact their State agency for information on where to report discrepancies involving ''significant differences'' to state officials.

Item 18b. Alternate Facility (or Generator) for Receipt of Full Load Rejections

Enter the name, address, phone number, and EPA Identification Number of the Alternate Facility which the rejecting TSDF has designated, after consulting with the generator, to receive a fully rejected waste shipment. In the event that a fully rejected shipment is being returned to the generator, the rejecting TSDF may enter the generator's site information in this space. This field is not to be used to forward partially rejected loads or residue waste shipments.

Item 18c. Alternate Facility (or Generator) Signature

The authorized representative of the alternate facility (or the generator in the event of a returned shipment) must sign and date this field of the form to acknowledge receipt of the fully rejected wastes or residues identified by the initial TSDF.

Item 19. Hazardous Waste Report Management Method Codes

Enter the most appropriate Hazardous Waste Report Management Method code for each waste listed in Item 9. The Hazardous Waste Report Management Method code is to be entered by the first treatment, storage, or disposal facility (TSDF) that receives the waste and is the code that best describes the way in which the waste is to be managed when received by the TSDF.

Item 20. Designated Facility Owner or Operator Certification of Receipt (Except As Noted in Item 18a)

Enter the name of the person receiving the waste on behalf of the owner or operator of the facility. That person must acknowledge receipt or rejection of the waste described on the Manifest by signing and entering the date of receipt or rejection where indicated. Since the Facility Certification acknowledges receipt of the waste except as noted in the Discrepancy Space in Item 18a, the certification should be signed for both waste receipt and waste rejection, with the rejection being noted and described in the space provided in Item 18a. Fully rejected wastes may be forwarded or returned using Item 18b after consultation with the generator. Enter the name of the person accepting the waste on behalf of the owner or operator of the alternate facility or the original generator. That person must acknowledge receipt or rejection of the waste described on the Manifest by signing and entering the date they received or rejected the waste in Item 18c. Partially rejected wastes and residues must be re-shipped under a new manifest, to be initiated and signed by the rejecting TSDF as offeror of the shipment.

Manifest Continuation Sheet

Instructions—Continuation Sheet, U.S. EPA Form 8700–22A

Read all instructions before completing this form. This form has been designed for use on a 12-pitch (elite) typewriter; a firm point pen may also be used—press down hard.

This form must be used as a continuation sheet to U.S. EPA Form 8700–22 if:

- More than two transporters are to be used to transport the waste; or
- More space is required for the U.S. DOT descriptions and related information in Item 9 of U.S. EPA Form 8700–22.

Federal regulations require generators and transporters of hazardous waste and owners or operators of hazardous waste treatment, storage, or disposal facilities to use the uniform hazardous waste manifest (EPA Form 8700–22) and, if necessary, this continuation sheet (EPA Form 8700–22A) for both interstate and intrastate transportation.

Item 21. Generator's ID Number

Enter the generator's U.S. EPA twelve digit identification number or, the State generator identification number if the generator site does not have an EPA identification number.

Item 22. Page __—

Enter the page number of this Continuation Sheet.

Item 23. Manifest Tracking Number

Enter the Manifest Tracking number from Item 4 of the Manifest form to which this continuation sheet is attached.

Item 24. Generator's Name—

Enter the generator's name as it appears in Item 5 on the first page of the Manifest.

Item 25. Transporter—Company Name

If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word ''Transporter'' the order of the transporter. For example, Transporter 3 Company Name. Also enter the U.S. EPA twelve digit identification number of the transporter described in Item 25.

Item 26. Transporter—Company Name

If additional transporters are used to transport the waste described on this Manifest, enter the company name of each additional transporter in the order in which they will transport the waste. Enter after the word ''Transporter'' the order of the transporter. For example, Transporter 4 Company Name. Each Continuation Sheet can record the names of two additional transporters. Also enter the U.S. EPA twelve digit identification number of the transporter named in Item 26.

Item 27. U.S. D.O.T. Description Including Proper Shipping Name, Hazardous Class, and ID Number (UN/NA)

For each row enter a sequential number under Item 27b that corresponds to the order of waste codes from one continuation sheet to the next, to reflect the total number of wastes being shipped. Refer to instructions for Item 9 of the manifest for the information to be entered.

Item 28. Containers (No. And Type)

Refer to the instructions for Item 10 of the manifest for information to be entered.

Item 29. Total Quantity

Refer to the instructions for Item 11 of the manifest form.

Item 30. Units of Measure (Weight/Volume)

Refer to the instructions for Item 12 of the manifest form.

Item 31. Waste Codes

Refer to the instructions for Item 13 of the manifest form.

Item 32. Special Handling Instructions and Additional Information

Refer to the instructions for Item 14 of the manifest form.

Transporters

Item 33. Transporter—Acknowledgment of Receipt of Materials

Enter the same number of the Transporter as identified in Item 25. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 25. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

Item 34. Transporter—Acknowledgment of Receipt of Materials

Enter the same number of the Transporter as identified in Item 26. Enter also the name of the person accepting the waste on behalf of the Transporter (Company Name) identified in Item 26. That person must acknowledge acceptance of the waste described on the Manifest by signing and entering the date of receipt.

Owner and Operators of Treatment, Storage, or Disposal Facilities

Item 35. Discrepancy Indication Space

Refer to Item 18. This space may be used to more fully describe information on discrepancies identified in Item 18a of the manifest form.

Item 36. Hazardous Waste Report Management Method Codes

For each field here, enter the sequential number that corresponds to the waste materials described under Item 27, and enter the appropriate process code that describes how the materials will be processed when received. If additional continuation sheets are attached, continue numbering the waste materials and process code fields sequentially, and enter on each sheet the process codes corresponding to the waste materials identified on that sheet.

PART 263—STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

■ 15. The authority citation for part 263 is revised to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

■ 16. Section 263.20 is amended by revising paragraphs (a) and (g) to read as follows:

§ 263.20 The manifest system.

(a)(1) *Manifest requirement.* A transporter may not accept hazardous waste from a generator unless the transporter is also provided with a manifest signed in accordance with the requirements of § 262.23.

(2) *Exports.* In the case of exports other than those subject to subpart H of 40 CFR part 262, a transporter may not accept such waste from a primary exporter or other person if he knows the shipment does not conform to the EPA Acknowledgment of Consent; and unless, in addition to a manifest signed by the generator as provided in this section, the transporter shall also be provided with an EPA Acknowledgment of Consent which, except for shipments by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment)). For exports of hazardous waste subject to the requirements of subpart H of 40 CFR part 262, a transporter may not accept hazardous waste without a tracking document that includes all information required by 40 CFR 262.84.

(3) *Compliance Date for Form Revisions.* The revised Manifest form and procedures in 40 CFR 260.10, 261.7, 263.20, and 263.21, shall not apply until September 5, 2006. The Manifest form and procedures in 40 CFR 260.10, 261.7, 263.20, and 263.21, contained in the 40 CFR, parts 260 to 265, edition revised as of July 1, 2004, shall be applicable until September 5, 2006.

* * * * *

(g) Transporters who transport hazardous waste out of the United States must:

(1) Sign and date the manifest in the International Shipments block to indicate the date that the shipment left the United States;

(2) Retain one copy in accordance with § 263.22(d);

(3) Return a signed copy of the manifest to the generator; and

(4) Give a copy of the manifest to a U.S. Customs official at the point of departure from the United States.

* * * * *

■ 17. Section 263.21 is amended by revising paragraph (b) to read as follows:

§ 263.21 Compliance with the manifest.

* * * * *

(b)(1) If the hazardous waste cannot be delivered in accordance with paragraph (a) of this section because of an emergency condition other than rejection of the waste by the designated facility, then the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

(2) If hazardous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter must obtain the following:

(i) For a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility's date and signature, and the Manifest Tracking Number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the original manifest. The transporter must retain a copy of this manifest in accordance with § 263.22, and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter must obtain a new manifest to accompany the shipment, and the new manifest must include all of the information required in 40 CFR 264.72(e)(1) through (6) or (f)(1) through (6) or 40 CFR 265.72(e)(1) through (6) or (f)(1) through (6).

(ii) For a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection in the discrepancy block of the manifest, and the name, address, phone number, and Identification Number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the manifest in accordance with § 263.22, and give a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter must obtain a new manifest for the shipment and comply with 40 CFR 264.72(e)(1) through (6) or 40 CFR 265.72(e)(1) through (6).

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 18. The authority citation for part 264 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart E—Manifest System, Recordkeeping, and Reporting

■ 19. Section 264.70 is revised to read as follows:

§ 264.70 Applicability.

(a) The regulations in this subpart apply to owners and operators of both on-site and off-site facilities, except as § 264.1 provides otherwise. Sections 264.71, 264.72, and 264.76 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources, nor to owners and operators of off-site facilities with respect to waste military munitions exempted from manifest requirements under 40 CFR 266.203(a). Section 264.73(b) only applies to permittees who treat, store, or dispose of hazardous wastes on-site where such wastes were generated.

(b) The revised Manifest form and procedures in 40 CFR 260.10, 261.7, 264.70, 264.71. 264.72, and 264.76, shall not apply until September 5, 2006. The Manifest form and procedures in 40 CFR 260.10, 261.7, 264.70, 264.71. 264.72, and 264.76, contained in the 40 CFR, parts 260 to 265, edition revised as of July 1, 2004, shall be applicable until September 5, 2006.

■ 20. Section 264.71 is amended by revising paragraphs (a) and (b)(4) and adding paragraph (e) to read as follows:

§ 264.71 Use of manifest system.

(a)(1) If a facility receives hazardous waste accompanied by a manifest, the owner, operator or his/her agent must sign and date the manifest as indicated in paragraph (a)(2) of this section to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

(2) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator or his agent must:

(i) Sign and date, by hand, each copy of the manifest;

(ii) Note any discrepancies (as defined in § 264.72(a)) on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy of the manifest to the generator; and

(v) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(3) If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest to the following address within 30 days of delivery: International Compliance Assurance Division, OFA/OECA (2254A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(b) * * *

(4) Within 30 days after the delivery, send a copy of the signed and dated manifest or a signed and dated copy of the shipping paper (if the manifest has not been received within 30 days after delivery) to the generator; and

* * * * *

(e) A facility must determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated Federally) as hazardous wastes under its state hazardous waste program. Facilities must also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.

■ 21. Section 264.72 is revised to read as follows:

§ 264.72 Manifest discrepancies.

(a) Manifest discrepancies are:

(1) Significant differences (as defined by paragraph (b) of this section) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives;

(2) Rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept; or

(3) Container residues, which are residues that exceed the quantity limits for ''empty'' containers set forth in 40 CFR 261.7(b).

(b) Significant differences in quantity are: For bulk waste, variations greater than 10 percent in weight; for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant differences in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(c) Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (*e.g.,* with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Regional Administrator a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

(d)(1) Upon rejecting waste or identifying a container residue that exceeds the quantity limits for ''empty'' containers set forth in 40 CFR 261.7(b), the facility must consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility must send the waste to the alternative facility or to the generator within 60 days of the rejection or the container residue identification.

(2) While the facility is making arrangements for forwarding rejected wastes or residues to another facility under this section, it must ensure that either the delivering transporter retains custody of the waste, or, the facility must provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under paragraph (e) or (f) of this section.

(e) Except as provided in paragraph (e)(7) of this section, for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest in accordance with § 262.20(a) of this chapter and the following instructions:

(1) Write the generator's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(2) Write the name of the alternate designated facility and the facility's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a) of this chapter.

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offeror's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation.

(7) For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility must retain a copy of this manifest for its records, and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (e)(1), (2), (3), (4), (5), and (6) of this section.

(f) Except as provided in paragraph (f)(7) of this section, for rejected wastes and residues that must be sent back to the generator, the facility is required to prepare a new manifest in accordance with § 262.20(a) of this chapter and the following instructions:

(1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(2) Write the name of the initial generator and the generator's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a).

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offeror's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation.

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the

original manifest by completing Item 18a and 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (f)(1), (2), (3), (4), (5), and (6) of this section.

(g) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for ''empty'' containers set forth in 40 CFR 261.7(b) after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility must amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility must also copy the manifest tracking number from Item 4 of the new manifest to the Discrepancy space of the amended manifest, and must re-sign and date the manifest to certify to the information as amended. The facility must retain the amended manifest for at least three years from the date of amendment, and must within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended.

■ 22. Section 264.76 is revised to read as follows:

§ 264.76 Unmanifested waste report.

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described by § 263.20(e) of this chapter, and if the waste is not excluded from the manifest requirement by this chapter, then the owner or operator must prepare and submit a letter to the Regional Administrator within 15 days after receiving the waste. The unmanifested waste report must contain the following information:

(1) The EPA identification number, name and address of the facility;

(2) The date the facility received the waste;

(3) The EPA identification number, name and address of the generator and the transporter, if available;

(4) A description and the quantity of each unmanifested hazardous waste the facility received;

(5) The method of treatment, storage, or disposal for each hazardous waste;

(6) The certification signed by the owner or operator of the facility or his authorized representative; and,

(7) A brief explanation of why the waste was unmanifested, if known.

(b) [Reserved]

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 23. The authority citation for part 265 is revised to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937, unless otherwise noted.

Subpart E—Manifest System, Recordkeeping, and Reporting

■ 24. Section 265.70 is revised to read as follows:

§ 265.70 Applicability.

(a) The regulations in this subpart apply to owners and operators of both on-site and off-site facilities, except as § 265.1 provides otherwise. Sections 265.71, 265.72, and 265.76 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources, nor to owners and operators of off-site facilities with respect to waste military munitions exempted from manifest requirements under 40 CFR 266.203(a).

(b) The revised Manifest form and procedures in 40 CFR 260.10, 261.7, 265.70, 265.71. 265.72, and 265.76, shall not apply until September 5, 2006. The Manifest form and procedures in 40 CFR 260.10, 261.7, 265.70, 265.71. 265.72, and 265.76, contained in the 40 CFR, parts 260 to 265, edition revised as of July 1, 2004, shall be applicable until September 5, 2006.

■ 25. Section 265.71 is amended by revising paragraphs (a) and (b)(4) and adding paragraph (e) to read as follows:

§ 265.71 Use of manifest system.

(a)(1) If a facility receives hazardous waste accompanied by a manifest, the owner, operator or his/her agent must sign and date the manifest as indicated in paragraph (a)(2) of this section to certify that the hazardous waste covered by the manifest was received, that the hazardous waste was received except as noted in the discrepancy space of the manifest, or that the hazardous waste was rejected as noted in the manifest discrepancy space.

(2) If a facility receives a hazardous waste shipment accompanied by a manifest, the owner, operator or his/her agent must:

(i) Sign and date, by hand, each copy of the manifest;

(ii) Note any discrepancies (as defined in § 265.72(a)) on each copy of the manifest;

(iii) Immediately give the transporter at least one copy of the manifest;

(iv) Within 30 days of delivery, send a copy of the manifest to the generator; and

(v) Retain at the facility a copy of each manifest for at least three years from the date of delivery.

(3) If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest to the following address within 30 days of delivery: International Compliance Assurance Division, OFA/OECA (2254A), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(b) * * *

(4) Within 30 days after the delivery, send a copy of the signed and dated manifest or a signed and dated copy of the shipping paper (if the manifest has not been received within 30 days after delivery) to the generator; and

* * * * *

(e) A facility must determine whether the consignment state for a shipment regulates any additional wastes (beyond those regulated Federally) as hazardous wastes under its state hazardous waste program. Facilities must also determine whether the consignment state or generator state requires the facility to submit any copies of the manifest to these states.

■ 26. Section 265.72 is revised to read as follows:

§ 265.72 Manifest discrepancies.

(a) Manifest discrepancies are:

(1) Significant differences (as defined by paragraph (b) of this section) between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives;

(2) Rejected wastes, which may be a full or partial shipment of hazardous waste that the TSDF cannot accept; or

(3) Container residues, which are residues that exceed the quantity limits for ''empty'' containers set forth in 40 CFR 261.7(b).

(b) Significant differences in quantity are: For bulk waste, variations greater than 10 percent in weight; for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant differences in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic

constituents not reported on the manifest or shipping paper.

(c) Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (*e.g.,* with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the Regional Administrator a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

(d)(1) Upon rejecting waste or identifying a container residue that exceeds the quantity limits for ''empty'' containers set forth in 40 CFR 261.7(b), the facility must consult with the generator prior to forwarding the waste to another facility that can manage the waste. If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility must send the waste to the alternative facility or to the generator within 60 days of the rejection or the container residue identification.

(2) While the facility is making arrangements for forwarding rejected wastes or residues to another facility under this section, it must ensure that either the delivering transporter retains custody of the waste, or the facility must provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under paragraph (e) or (f) of this section.

(e) Except as provided in paragraph (e)(7) of this section, for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest in accordance with § 262.20(a) of this chapter and the following instructions:

(1) Write the generator's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space in Item 5.

(2) Write the name of the alternate designated facility and the facility's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment.

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a) of this chapter.

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offeror's Certification to certify, as the offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation.

(7) For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information on the next destination facility in the Alternate Facility space. The facility must retain a copy of this manifest for its records, and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (e)(1), (2), (3), (4), (5), and (6) of this section.

(f) Except as provided in paragraph (f)(7) of this section, for rejected wastes and residues that must be sent back to the generator, the facility is required to prepare a new manifest in accordance with § 262.20(a) of this chapter and the following instructions:

(1) Write the facility's U.S. EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5 of the new manifest. If the mailing address is different from the generator's site address, then write the generator's site address in the designated space for Item 5.

(2) Write the name of the initial generator and the generator's U.S. EPA ID number in the designated facility block (Item 8) of the new manifest.

(3) Copy the manifest tracking number found in Item 4 of the old manifest to the Special Handling and Additional Information Block of the new manifest, and indicate that the shipment is a residue or rejected waste from the previous shipment,

(4) Copy the manifest tracking number found in Item 4 of the new manifest to the manifest reference number line in the Discrepancy Block of the old manifest (Item 18a),

(5) Write the DOT description for the rejected load or the residue in Item 9 (U.S. DOT Description) of the new manifest and write the container types, quantity, and volume(s) of waste.

(6) Sign the Generator's/Offeror's Certification to certify, as offeror of the shipment, that the waste has been properly packaged, marked and labeled and is in proper condition for transportation,

(7) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest by completing Item 18b of the manifest and supplying the generator's information in the Alternate Facility space. The facility must retain a copy for its records and then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest and comply with paragraphs (f)(1), (2), (3), (4), (5), and (6) of this section.

(g) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for ''empty'' containers set forth in 40 CFR 261.7(b) after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility must amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility must also copy the manifest tracking number from Item 4 of the new manifest to the discrepancy space of the amended manifest, and must re-sign and date the manifest to certify to the information as amended. The facility must retain the amended manifest for at least three years from the date of amendment, and must within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to their being amended.

■ 27. Section 265.76 is revised to read as follows:

§ 265.76 Unmanifested waste report.

(a) If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described by § 263.20(e) of this chapter, and if the waste is not excluded from the manifest requirement by this chapter, then the owner or operator must prepare and submit a letter to the Regional Administrator within fifteen days after receiving the waste. The unmanifested waste report must contain the following information:

(1) The EPA identification number, name and address of the facility;

(2) The date the facility received the waste;

(3) The EPA identification number, name and address of the generator and the transporter, if available;

(4) A description and the quantity of each unmanifested hazardous waste the facility received;

(5) The method of treatment, storage, or disposal for each hazardous waste;

(6) The certification signed by the owner or operator of the facility or his authorized representative; and

(7) A brief explanation of why the waste was unmanifested, if known.

(b) [Reserved]

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

■ 28. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

■ 29. Section 271.1(j) is amended by adding the following entries to Table 1 in chronological order by date of publication in the **Federal Register**, to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	**Federal Register** reference	Effective date
* *	* *	* *	*
Mar. 4, 2005	Waste Minimization Certification in the Revised Manifest Rule.	[Insert FR page numbers]	Sept. 6, 2005.
* *	* *	* *	*

■ 30. Section 271.10 is amended by revising paragraphs (f)(1), (f)(2), (f)(3), and (h) introductory text, (h)(1), and (h)(2) to read as follows:

§ 271.10 Requirements for generators of hazardous wastes.

* * * * *

(f) * * *

(1) Use a manifest system that ensures that interstate and intrastate shipments of hazardous waste are designated for delivery and, in the case of intrastate shipments, are delivered to facilities that are authorized to operate under an approved State program or the federal program. The manifest system must require the use of the manifest format as required by § 262.20(a). No other manifest form, shipping document, or information, other than that required by federal law, may be required by the State to travel with the shipment.

(2) Initiate the manifest and designate on the manifest the treatment, storage or disposal facility to which the waste is to be shipped.

(3) Ensure that all wastes offered for transportation are accompanied by a manifest, except:

(i) Shipments subject to 40 CFR 262.20(e) or (f);

(ii) Shipments by rail or water, as specified in 40 CFR 262.23(c) and (d).

* * * * *

(h) The State must follow the Federal manifest format for the form and instructions (40 CFR 262.20 and the appendix to part 262).

(1) A state may require the entry of waste codes associated with particular wastes that are regulated as hazardous wastes by the state, if the state codes are not redundant with a federally required code for the same waste. No state, however, may impose enforcement sanctions on a transporter during transportation of the shipment for failure of the form to include a state-required waste code.

(2) Either the State to which a shipment is manifested (consignment State) or the State in which the generator is located (generator State), or both, may require that copies of the manifest form be submitted to the State.

* * * * *

■ 31. Section 271.11 is amended by revising paragraph (c) to read as follows:

§ 271.11 Requirements for transporters of hazardous waste.

* * * * *

(c)(1) The State must require transporters to carry the manifest during transport, except in the case of shipments by rail or water, transporters may carry a shipping paper, as specified in 40 CFR 263.20(e) and (f);

(2) The State must require the transporter to deliver waste only to the facility designated on the manifest, which in the case of return shipments of rejected wastes or regulated container residues, may also include the original generator of the waste shipment.

(3) The State program must provide requirements for shipments by rail or water equivalent to those under 40 CFR 263.20(e) and (f).

(4) For exports of hazardous waste, the state must require the transporter to refuse to accept hazardous waste for export if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent, to carry an EPA Acknowledgment of Consent to the shipment, to sign and date the International Shipments Block of the manifest to indicate the date the shipment leaves the U.S., and to provide a copy of the manifest to the U.S. Customs official at the point the waste leaves the United States.

* * * * *

■ 32. Section 271.12 is amended by revising paragraph (i) to read as follows:

§ 271.12 Requirements for hazardous waste management facilities.

* * * * *

(i) Compliance with the manifest system including the requirement that facility owners or operators return a signed copy of the manifest:

(1) To the generator to certify delivery of the hazardous waste shipment or to identify discrepancies; and

(2) To EPA's International Compliance Assurance Division program, at the address referenced in 40 CFR 264.71(a)(3) and 265.71(a)(3), to indicate the receipt of a shipment of hazardous waste imported into the U.S. from a foreign source.

* * * * *

[FR Doc. 05–1966 Filed 3–3–05; 8:45 am]

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Federal Register

Friday,
March 4, 2005

Part IV

Department of Education

Arizona Department of Economic Security; Written Findings and Decision and Compliance Agreement Under the Infants and Toddlers With Disabilities Program—Part C of the Individuals With Disabilities Education Act; Notice

DEPARTMENT OF EDUCATION

Arizona Department of Economic Security; Written Findings and Decision and Compliance Agreement Under the Infants and Toddlers With Disabilities Program—Part C of the Individuals With Disabilities Education Act

AGENCY: Office of Special Education Programs, Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of written findings and decision and compliance agreement.

SUMMARY: Section 457 of the General Education Provisions Act (GEPA) authorizes the U.S. Department of Education (Department) to enter into a compliance agreement with a recipient that is failing to comply substantially with Federal program requirements. In order to enter into a compliance agreement, the Department must determine, in written findings, that the recipient cannot comply until a future date with the applicable program requirements and that a compliance agreement is a viable means of bringing about such compliance. On December 16, 2004, the Department entered into a compliance agreement with the Arizona Department of Economic Security (DES). Under section 457(b)(2) of GEPA, the written findings and decision and compliance agreement must be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Julia Martin, U.S. Department of Education, 400 Maryland Avenue, SW., room 4037, Potomac Center Plaza, Washington DC 20004–2600. Telephone (202) 245–7431.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: Under Part C of the Individuals with Disabilities Education Act (Part C), the Department provides funds to States to ''maintain and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.'' 20 U.S.C. 1433, 1435(a)(2), 1437(a)(3)(A). Early intervention services are services that are, among other things, ''designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas—(i) physical development; (ii) cognitive development; (iii) communication development; (iv) social or emotional development; or (v) adaptive development''; ''are provided by qualified personnel''; ''to the maximum extent appropriate, are provided in natural environments, including the home, and community settings in which children without disabilities participate''; and ''are provided in conformity with an individualized family service plan adopted in accordance with section 1436 of this title.'' 20 U.S.C. 1432(4)(C), (F), (G) and (H).

On March 15, 2004, in response to Arizona's Part C Federal fiscal year (FFY) 2001 Annual Performance Report (APR) and following a State verification monitoring visit by the Department's Office of Special Education Programs (OSEP) to Arizona in December 2003, OSEP issued two letters documenting DES's continued non-compliance with the following four requirements:

(1) Utilizing effective monitoring procedures to ensure the identification and correction of noncompliance with Part C under 34 CFR 303.501;

(2) Conducting evaluations and assessments and holding the initial Individualized Family Service Plan (IFSP) meeting within 45 days from referral under 34 CFR 303.321(e)(2), 303.322(e)(1) and 303.342(a);

(3) Providing in a timely manner to all eligible infants and toddlers with disabilities, including infants and toddlers on reservations, early intervention services identified on the child's IFSP under 34 CFR 303.342(e); and

(4) Ensuring that all service coordination functions are implemented under 34 CFR 303.23 and 303.344(g). These same noncompliance findings were four of the seven findings originally identified in OSEP's 2000 Arizona Part C Monitoring Report.

On March 25, 2004, DES Director, David Berns, requested that the Department consider entering into a Compliance Agreement with DES under Part C of the IDEA. Before entering into a compliance agreement, the Department must hold a hearing at which the recipient, individuals affected by any potential compliance agreement, including infants and toddlers with disabilities and their families or other representatives, and other interested parties are invited to participate. In that hearing, the recipient has the burden of persuading the Department that: (1) Full compliance with the applicable requirements of law is not feasible until a future date; and (2) that a compliance agreement is a viable means for bringing about such compliance in no more than three years. 20 U.S.C. 1234f(b)(1) and (c). If, on the basis of all the evidence available, the Secretary determines that the recipient has met that burden, the Secretary is to make written findings to that effect and publish those findings, together with the substance of the compliance agreement, in the **Federal Register**. 20 U.S.C. 1234f(b)(2).

On May 20, 2004, Department officials conducted a public hearing in Phoenix, Arizona regarding DES's ability to meet certain Part C requirements. The testimony and materials either presented at the hearing, or submitted in relation to the hearing, by DES representatives, other State agency representatives, parent and State Interagency Coordinating Council representatives, Part C early intervention providers, and other affected or interested individuals confirmed that, as required under 20 U.S.C. 1234f, full compliance with Part C requirements by DES is genuinely not feasible until a future date, but that DES will be able to come into full compliance with Part C within three years. Testimony and written submissions supported the development of a compliance agreement that would bring DES into compliance with Part C as soon as feasible and would allow continuation of Part C funding by OSEP to Arizona during this process. As indicated in the Secretary's Written Findings and Decision of the Secretary, the Department has determined that a compliance agreement is appropriate to address the four areas of Part C non-compliance.

As required by section 457(b)(2) of GEPA, 20 U.S.C. 1234f(b)(2), the text of the Secretary's Decision is set forth as Appendix A and the Compliance Agreement is set forth as Appendix B of this notice.

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(Authority: 20 U.S.C. 1234c, 1234f, 1431 through 1445)

Dated: February 25, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

Department of Education

In the matter of the Request of the Arizona Department of Economic Security to Enter into a Compliance Agreement; Written Findings and Decision of the Secretary.

I. Introduction

The United States Department of Education (Department) has determined, pursuant to 20 U.S.C. 1234c, that the Arizona Department of Economic Security (DES) has failed to comply substantially with the requirements of Part C of the Individuals with Disabilities Education Act (Part C or IDEA), codified at 20 U.S.C. 1401 through 1407 and 1431 through 1445, and its implementing regulations at 34 CFR part 303. DES is the lead agency designated by the Governor of Arizona to implement Arizona's statewide system of early intervention services under Part C of the IDEA. The Arizona Early Intervention Program (DES/AzEIP) is the office within DES that is responsible for the daily administration and oversight of Arizona's early intervention program for infants and toddlers with disabilities and their families under Part C of the IDEA.[1]

On March 15, 2004, in response to Arizona's Part C Federal fiscal year (FFY) 2001 Annual Performance Report (APR) and following a State verification monitoring visit by the ED Office of Special Education Programs (OSEP) to Arizona in December 2003, OSEP issued two letters documenting DES's continued noncompliance with the following four Part C requirements:

(1) Utilizing effective monitoring procedures to ensure the identification and correction of noncompliance with Part C under 34 CFR 303.501;

(2) Conducting evaluations and assessments and holding the initial Individualized Family Service Plan (IFSP) meeting within 45 days from initial referral under 34 CFR 303.321(e)(2), 303.322(e)(1) and 303.342(a);

(3) Providing in a timely manner all early intervention services identified on the IFSP to all eligible infants and toddlers with disabilities, including infants and toddlers on reservations, under 34 CFR 303.342(e); and

(4) Ensuring that all service coordination functions are implemented under 34 CFR 303.23 and 303.344(g).

These four noncompliance findings were part of seven findings originally identified in OSEP's 2000 Arizona Part C Monitoring Report.[2] As noted below, although DES has addressed three of the findings from OSEP's 2000 monitoring report, DES has indicated, and the Department has determined, that DES will need additional time to make systemic changes in its monitoring, data, service delivery, and other systems in order to ensure correction of the remaining four findings.

During OSEP's December 2003 verification visit to the State, DES and OSEP officials discussed the possibility of a compliance agreement, which would allow the State up to three years to correct noncompliance that the State could not effectively correct within a shorter period of time. On March 25, 2004, DES sent a letter to OSEP requesting that OSEP consider entering into a compliance agreement as a way to resolve the State's Part C noncompliance issues. On May 20, 2004, Department officials conducted a public hearing in Arizona in accordance with the GEPA requirements of 20 U.S.C. 1234f(b), at which oral and written testimony were received. Witnesses representing DES/AzEIP, the State Interagency Coordinating Council (SICC), other DES/AzEIP state agency partners, early intervention providers and other concerned organizations (including State stakeholders) testified at this hearing on the question of whether the Department should grant DES's request to enter into a Compliance Agreement. Additional written testimony was submitted to the Department both prior to and after the public hearing.

The Department has reviewed all oral and written testimony submitted, the Compliance Agreement DES has signed, and other relevant materials.[3] On the basis of this evidence, the Department concludes, and issues these written findings as required by 20 U.S.C. 1234f(b)(2), that DES has met its burden of establishing that:

(1) Compliance by DES with Part C is not feasible until a future date, and

(2) DES will be able to carry out the terms and conditions of the Compliance Agreement it has signed and will come into full compliance with Part C by the end of the term of this Agreement.

During the effective period of the Compliance Agreement, which expires three years from the date of this decision, DES will continue to be eligible to receive Part C funds as long as it complies with all the terms and conditions of the Agreement.

II. Legal Basis for Entering Into a Compliance Agreement: Requirements Under Part C and GEPA

A. Part C Requirements

Part C was passed in response to Congress's finding that ''there is an urgent and substantial need * * * to enhance the development of infants and toddlers with disabilities and to minimize their potential for developmental delay.'' 20 U.S.C. 1431(a)(1). Congress established Part C ''to provide financial assistance to States * * * to develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families.''[4] 20 U.S.C. 1441(b)(1). Early intervention services are defined as ''developmental services that:—

(A) Are provided under public supervision;

(B) Are provided at no cost except where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;

(C) Are designed to meet the developmental needs of an infant or toddler with a disability in any one or more of the following areas—(i) physical development; (ii) cognitive development; (iii) communication development; (iv) social or emotional development; or (v) adaptive development;

(D) Meet the standards of the State in which they are provided, including the requirements of this part;

(E) Include [list of early intervention services such as speech, occupational, physical therapy, etc.];

(F) Are provided by qualified personnel * * *;

(G) To the maximum extent appropriate, are provided in natural environments, including the home, and community settings

[1] The Arizona Part C early intervention statewide system of services comprises the following State agencies and its contractors: (1) DES (which includes AzEIP, and the Division of Developmental Disabilities (DDD) (another unit within DES, and which is a major early intervention service provider in Arizona), (2) the Arizona State Schools for the Deaf and the Blind (ASDB), (3) the Arizona Department of Health Services (ADHS), (4) the Arizona Department of Education (ADE), and (5) the Arizona Health Care Cost Containment System (AHCCCS).

[2] OSEP's Monitoring Report, issued on May 22, 2000, identified the following seven findings of noncompliance with Part C:

(1) General Supervision: 34 CFR 303.501—Ineffective Monitoring Procedures to Ensure Consistent Implementation of Part C;

(2) Child Find: 34 CFR 303.321 and 303.320—Development of a Comprehensive, Coordinated, Statewide Child Find System;

(3) Failure to Disseminate Public Awareness Information to Primary Referral Sources;

(4) Failure under 34 CFR 303.322(e)(1) to convene the initial Individualized Family Service Plan (IFSP) meeting within 45 days from initial referral including identification of all needed services;

(5) Failure under 34 CFR 303.322(e)(2) to appropriately extend timelines for evaluations and assessments and to routinely and inappropriately develop interim IFSPs;

(6) Failure to provide all services to all eligible children under 34 CFR 303.322 including children on reservations; and

(7) Failure to ensure under 34 CFR 303.23(a)(2) that all service coordination functions are implemented.

[3] A copy of the Compliance Agreement is attached as Appendix A to these Written Findings and Decision.

[4] An ''infant or toddler with a disability'' ''(A) means an individual under 3 years of age who needs early intervention services because the individual (i) is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures in one or more of the areas of cognitive development, physical development, communication development, social or emotional development, and adaptive development; or (ii) has a diagnosed physical or mental condition which has a high probability of resulting in developmental delay; and (B) may also include, at a State's discretion, at-risk infants and toddlers.'' 20 U.S.C. 1432(5). Arizona does not include ''at-risk infants and toddlers'' in its definition of ''infants and toddlers with disabilities.''

in which children without disabilities participate; and

(H) Are provided in conformity with an individualized family service plan [IFSP] adopted in accordance with section 636 [20 U.S.C. 1436].''

20 U.S.C. 1432(4); 34 CFR 303.12.

In order to ensure that early intervention services are provided in compliance with Part C, a State must ensure it has a statewide system that addresses Part C requirements regarding: general supervision (including monitoring and data collection and reporting), child find and public awareness, timely evaluations and assessments, IFSP development, provision of early intervention services in natural environments, and transition planning. Under Part C, the lead agency's general supervision responsibilities include: (1) Monitoring for compliance and performance, (2) ensuring correction and enforcement of identified deficiencies, (3) providing technical assistance and training and (4) ensuring the provision of procedural safeguards through the due process and State complaint procedures. 20 U.S.C. 1435(a)(10)(A); 34 CFR 303.501, 303.403, 303.420, and 303.510 through 303.512. The Part C general supervision requirements must be read in conjunction with DES's responsibility under GEPA at 20 U.S.C. 1232d(b)(3), to adopt and use proper methods of administering the Part C program, including, among other requirements: (1) Monitoring of agencies, institutions, and organizations responsible for carrying out Part C; (2) the enforcement of the obligations imposed on those agencies, institutions, and organizations under Part C; (3) providing technical assistance, where necessary, to such agencies, institutions, and organizations; and (4) the correction of deficiencies in program operations that are identified through monitoring or evaluation.

Under Part C, the lead agency is required to ensure that all programs and activities used by the State to carry out Part C (whether or not they receive Part C funds) are monitored for compliance with Part C requirements and that interagency agreements are in place to ensure that services are provided in a timely manner. 20 U.S.C. 1435(a)(10)(A); 34 CFR 303.501 and 303.523 through 303.528. When the lead agency determines that program providers and other agencies, institutions and organizations that are part of the Part C system in a State are not in compliance, Part C requires the lead agency to enforce the requirements of Part C and correct deficiencies that are identified through monitoring and its general supervision authority. 20 U.S.C. 1435(a)(10)(A); 34 CFR 303.501(b)(2) and (4). The lead agency is also responsible for providing technical assistance and training to agencies, institutions and organizations that administer the Part C program. 20 U.S.C. 1435(a)(10)(A); 34 CFR 303.501(b)(3). Part C requires that there be a single line of responsibility and clear interagency guidelines to ensure that one agency, the lead agency, is responsible for administering Part C in the State. 20 U.S.C. 1435(a)(10)(A); 34 CFR 303.500. General supervision has been a challenge for DES due to the number of agencies that either directly provide or contract with private entities and individuals to provide early intervention services.

Other Part C requirements include ensuring that all infants and toddlers with disabilities and their families: are referred into the program in a timely manner (34 CFR 303.321(e)(2), 303.322(e)(1) and 303.342(a)), are assigned a single service coordinator (34 CFR 303.23(a)(2)) who helps the child and family through coordination and other activities (34 CFR 303.23(a)(2) and (b)), are evaluated in all five developmental areas (34 CFR 303.322(c)(3)(ii)), and, if determined eligible, have IFSPs developed in a timely manner that address all content requirements (34 CFR 303.342(a) and 303.344), are provided those early intervention services listed on their IFSP (34 CFR 303.342(e)), and receive timely transition meetings and plans as they exit the program (34 CFR 303.148(b) and 303.344(h)). This system is intended to be seamless so that an infant or toddler with a disability and the family receive all appropriate early intervention services to meet the unique developmental needs of the child and to support the family. DES's failure to comply with key Part C requirements (monitoring and correction, timely evaluations and assessments, service coordination and provision of early intervention services) have led to waiting lists for infants and toddlers and their families for evaluations and assessments as well as early intervention services.

B. Authority To Enter Into a Compliance Agreement Under Part C and GEPA

If a State fails to comply substantially with the requirements of Part C, the IDEA authorizes the Department to withhold funds from that State or refer the matter to the Department of Justice. 20 U.S.C. 1416(a) and 1442. GEPA provides the Department with additional enforcement options for a grant recipient that the Department concludes is ''failing to comply substantially with any requirements of law applicable to such funds.'' 20 U.S.C. 1234c. These remedies include issuing a cease and desist order. 20 U.S.C. 1234c. As an alternative to withholding funds, issuing a cease and desist order, or referral to the Department of Justice, the Department may enter into a Compliance Agreement with a recipient that is failing to comply substantially with specific program requirements. 20 U.S.C. 1234f. In this instance, and at DES's request, the Department has determined it is appropriate to address DES's failure to comply substantially with the requirements of Part C through a Compliance Agreement.

The purpose of a Compliance Agreement is ''to bring the recipient into full compliance with the applicable requirements of the law as soon as feasible and not to excuse or remedy past violations of such requirements.'' 20 U.S.C. 1234f(a). Before entering into a Compliance Agreement, the Department must hold a public hearing at which the recipient, affected infants and toddlers with disabilities and their parents or their representatives, and other interested parties are invited to participate. At the hearing, the recipient has the burden of persuading the Department that: (1) Full compliance with the applicable requirements of law is not feasible until a future date and (2) a compliance agreement is a viable means for bringing about such compliance in no more than three years. 20 U.S.C. 1234f(b)(1). If, on the basis of all the evidence available to the Department, the Secretary determines that the recipient has met that burden, the Secretary is to make written findings to that effect and publish those findings and the Secretary's decision, together with the substance of the Compliance Agreement, in the **Federal Register**. 20 U.S.C. 1234f(b)(2).

A Compliance Agreement must set forth an expiration date not later than 3 years from the date of the Secretary's written findings and decision under 20 U.S.C. 1234f(b)(2), by which time the recipient must be in full compliance with all program requirements. In addition, the Compliance Agreement must contain the terms and conditions with which the recipient must comply during the period that the Agreement is in effect. 20 U.S.C. 1234f(c). If the recipient fails to comply with any of the terms and conditions of the Compliance Agreement, the Department may consider the Agreement no longer in effect and may take any action authorized by law, including withholding of funds, issuing of a cease and desist order, or referring the matter to the Department of Justice. 20 U.S.C. 1234f(d).

III. DES's Ability To Meet the Requirements of the Compliance Agreement

In determining whether it is appropriate to enter into a Compliance Agreement with DES, the Department must first determine two issues. First, the Department must determine: Can DES come immediately into compliance with Part C (including its monitoring, timely evaluations and assessments, service coordination and provision of early intervention services requirements)? 20 U.S.C. 1234f(b). Second, the Department must determine: Will DES be able to come into compliance with the applicable Part C requirements within a period of no more than three years? If the Department cannot answer the first question in the negative and the second question in the affirmative, then it is inappropriate for the Department to enter into a Compliance Agreement with DES under 20 U.S.C. 1234f. In arriving at the terms of the Compliance Agreement, DES must not only come into full compliance by the end of the effective period of the Compliance Agreement, it must also make steady and measurable progress toward the Agreement's objectives while it is in effect.

A. DES Cannot Immediately Come Into Compliance With Part C Requirements

DES's failure to comply with four major Part C requirements, as documented in OSEP's March 15, 2004 monitoring and APR letters and OSEP's 2000 monitoring report and acknowledged by DES, is caused by a number of complicating factors such as the fact that early intervention services in Arizona are provided through a number of different interagency and intra-agency programs and private contractors and provided in rural settings including reservations, and, as a result, cannot be

corrected immediately. DES's testimony and that of other witnesses at the Department's May 20, 2004 public hearing (including other State agency representatives, providers, SICC representatives and other Part C stakeholders) provided compelling support for this conclusion.

1. DES Cannot Come Into Compliance Immediately With the Four Part C Requirements That Were the Subject of OSEP's Findings

As noted below and confirmed through the testimony of DES, State agency representatives, early intervention providers, Arizona SICC representatives and others, DES is not in compliance now, and cannot immediately come into compliance, with the following specific Part C requirements that were ongoing findings of noncompliance originally identified in OSEP's 2000 report and reiterated in OSEP's March 15, 2004 letters (following OSEP's December 2003 verification monitoring visit to the State):

(1) Utilizing effective monitoring procedures to ensure the identification and correction of noncompliance with Part C under 34 CFR 303.501;

(2) Conducting evaluations and assessments and holding the initial Individualized Family Service Plan (IFSP) meeting within 45 days from initial referral under 34 CFR 303.321(e)(2), 303.322(e)(1) and 303.342(a);

(3) Providing in a timely manner all early intervention services identified on the IFSP to all eligible infants and toddlers with disabilities, including infants and toddlers on reservations, under 34 CFR 303.342(e); and

(4) Ensuring that all service coordination functions are implemented under 34 CFR 303.23 and 303.344(g).

2. DES Cannot Immediately Come Into Compliance With Part C Due to the Need for Major Systemic Changes To Address System Capacity Issues, Coordinate Monitoring, Policies, and Data Systems Across All Participating Agencies and Providers and Deliver Team-Based Services

At the May 20, 2004 hearing and in its testimony, DES acknowledged that it is not complying with Part C and cannot immediately come into compliance with Part C requirements. In her presentation, DES/AzEIP Director Molly Dries identified at least five major barriers to DES's ability to come into immediate compliance with Part C: (1) The lack of a coordinated interagency monitoring system to identify and correct noncompliance; (2) the lack of interagency coordination on policies and procedures to ensure they reflect Part C requirements; (3) the lack of coordinated data systems between and within participating agencies to ensure that Part C compliance elements are reflected; (4) insufficient system capacity to ensure adequate personnel to provide timely evaluations and assessments and early intervention services; and (5) a team-based model of service delivery that can track children from referral to exit from the Part C program.

One major barrier to immediate compliance is DES's need to establish an interagency monitoring system and coordinated policies and procedures, since Arizona's statewide system of early intervention services involves efforts from five different State agencies and two major programs within DES as well as numerous private contractors. Five different agencies (including DES) conduct child find, evaluations and assessments, and provide service coordination and early intervention services and transition planning. At the public hearing, DES officials testified that DES does not have a system to monitor its intra- and interagency State counterparts that provide early intervention services or the private providers that conduct evaluations and assessments and provide service coordination and early intervention services to infants and toddlers with disabilities and their families. DES has just begun to establish protocols for monitoring of all Part C requirements but has yet to conduct monitoring of other State agency partners. DES has established a dialogue for working with each of these agencies on an ongoing basis to coordinate all Part C activities including monitoring these agencies' compliance with Part C requirements and providing joint and collaborative training and technical assistance. However, as noted by all State agency representatives who testified at the hearing, much work remains to be done. As DeAnn Davies (SICC Chair) submitted in her written testimony, ''* * * state systems were fragmented from each other. * * * The state AzEIP office did not hold the critically needed strength in order to demand compliance from partnering agencies * * *.'' DES must undertake major interagency efforts to ensure that the monitoring systems are coordinated, State agency partner data systems reflect Part C requirements and all agencies' policies and procedures are aligned with Part C requirements.

DES cannot immediately address this barrier. The first critical step will be the development of memoranda of agreements that address each agency's responsibility in addressing Part C's requirements. Another critical step will be interagency cooperation to allow DES to monitor, based on Part C standards, each State participating agency for Part C requirements such as timely evaluations and assessments and provision of early intervention services and service coordination. DES also intends to align with its other agency partners all participating programs' and agencies' policies and procedures on substantive Part C requirements. Defining the respective agencies' responsibilities, implementing an interagency monitoring system that can identify and correct noncompliance, and aligning policies and procedures are all necessary to ensure compliance with Part C.

A second barrier is the need for DES/AzEIP to review (and revise if necessary) its data system (ACTS) to ensure that it includes critical Part C compliance elements and align its data system with participating State agencies and programs. DES officials testified that ensuring complete and accurate data reporting is critical for program evaluation and decision-making. Securing baseline compliance data is the first major step in DES's plan toward identifying and addressing system capacity and other root causes for each of the areas of noncompliance identified by OSEP. At the time of OSEP's December 2003 verification monitoring visit, DES did not collect data on the number of infants and toddlers waiting for evaluations and assessments and the number of infants and toddlers with disabilities and their families who were waiting for early intervention services. DES will revise its ACTS data system to collect and report on this information. Revising and verifying its new data system and aligning it with other State agency data systems will take DES more than one year. Effectively utilizing the data from the new data system as part of its new monitoring system to verify both noncompliance areas and corrective action results will take DES even longer.

Another major barrier that affects DES' ability to comply with Part C is the capacity of the system to serve the number of infants and toddlers referred to the program. One possible cause is the lack of sufficient qualified personnel to conduct evaluations and assessments and provide early intervention services. Testimony from DES officials, tribal representatives, and early intervention providers cited personnel recruitment and retention, provider rate structure and other personnel and system issues as among the major challenges for timely evaluations and assessments and early intervention service delivery. DES cannot, acting on its own, immediately address this personnel shortage. DES has been unable to find providers who are willing to travel to rural areas or reservations or, in some cases, has discovered that different agency or funding source service provider rate structures create disincentives for provision of early intervention services in natural environments. Under the Compliance Agreement, DES will develop relationships with institutions of higher education, and also will develop regional service provider directories to better track existing personnel and recruit and retain new personnel in needed professions. Removing these system capacity barriers and obtaining needed personnel will require a long-term effort that will involve working with other organizations in Arizona to ensure that qualified personnel are available to conduct evaluations and assessments and provide early intervention services.

Finally, DES identified the lack of a streamlined system from referral to service delivery and a team-based approach for delivering services as barriers to the timely provision of evaluations and assessments and early intervention services. As Mary Ann Sheely, an early intervention occupational therapy provider, noted in her testimony, ''* * * the process of evaluating a child and then determining the appropriate services still lacks coordination and clear communication methods with families. The current system is too complicated, due to the many steps it takes to complete.'' However, as DES officials and State agency witnesses testified, envisioning and implementing such a system from the initial planning process (IPP) to the delivery of all early intervention services by all participating agencies and providers cannot occur immediately; interagency agreements, policies and procedures, and provider contracts must all

be reviewed and revised to ensure consistency in a service delivery model that maximizes personnel resources while ensuring that early intervention services are coordinated for the infant or toddler with a disability and his or her family.

3. Testimony From Arizona State Agency Representatives, Early Intervention Providers, SICC Representatives and Others All Confirms That DES Cannot Immediately Come Into Compliance

Testimony from other individuals also confirmed that DES cannot come into full compliance with Part C requirements immediately. Representatives from other Arizona agencies that provide early intervention services, early intervention service providers, SICC representatives and others all testified that DES will need additional time to achieve full compliance. David Bern, DES Director, confirmed that although DES does not wish to take more time than necessary, DES will need additional time to address the remaining findings. Representatives from five other State Part C agency partners (Ida Fitch of DDD, Sue Juarez of ACCESS, Lynn Busenbark of ADE, Barbara Hess of ADHS, and Judy Parish of ASDB) testified that DES needs more time to ensure interagency coordination among the agencies that are part of the early intervention system in Arizona and align data systems and policies and procedures. Maria Bravo, SICC Vice-Chair and a grandparent of a child with a disability, testified that DES needed more time to work with its interagency partners.

Other witnesses, including private contractors, SICC representatives, parents of children with disabilities, and early intervention providers, confirmed that DES continues to face long-term challenges in complying with Part C, including system capacity issues and availability of qualified personnel to provide evaluations and assessments and early intervention services. Testimony from these witnesses confirmed that waiting lists continue to exist for evaluations and assessments and for early intervention services, although a few witnesses testified that the waiting lists appear to be decreasing. (Melanie Taylor (a parent) described how the delays had previously been as long as six months; Annabelle Ratley (of the Blake Foundation) noted that children are being seen sooner and eligibility is being determined faster; and George Hatchell (of DES/AzEIP) talked about the time for development of an IFSP decreasing such that fewer eligible children and their families were waiting for their IFSPs to be developed.) Early intervention service providers, including speech language pathologists, occupational therapists and physical therapists, also submitted testimony noting that timeliness of evaluations and assessments and of provision of services was a problem due to system capacity issues and confusion regarding roles and responsibilities of service coordinators and early intervention providers. Judy Capps of the Gilah Indian River Community (GIRC) testified for the need for additional time to ensure, among other things, that its data system was aligned with DES/AzEIP's data system.

The evidence gathered by the Department at the public hearings and through its monitoring of DES's early intervention program confirms that DES is not able to immediately come into compliance with the requirements of Part C. These problems are not isolated examples of noncompliance that can be quickly or easily corrected, but the outgrowth of systemic failures, for which systemic change is needed. The Department, therefore, concludes that DES cannot come into immediate compliance with the requirements of Part C.

B. DES Can Come Into Compliance With Part C Within Three Years

The Department has concluded that DES can meet the terms and conditions of the attached Compliance Agreement and come into full compliance with Part C within three years. The Compliance Agreement sets forth clear goals, outcomes and objectives, specific activities to reach those results, and timelines including target completion dates. Testimony at the hearing supports the conclusion that DES is committed to making the necessary changes to come into compliance with Part C. For example, SICC member Connie Shore noted that DES had undertaken significant steps to address those areas of noncompliance that were in its direct control immediately after OSEP's initial on-site monitoring visit and such efforts indicate DES's ability to implement its plan for achieving compliance. These steps included developing a model IFSP form, developing and disseminating appropriate public awareness materials, and outlining a plan for a monitoring system. GIRC representative Judy Capps indicated that the number of infants and toddlers with disabilities served at the Gilah Indian River Community increased from 19 to 99 and over 400 potentially eligible children were screened during her short tenure (less than three years). Annabelle Ratley of the Blake Foundation (a private contractor that contracts with all participating State agencies except for ASDB) indicated that IFSPs look different and are more individualized now.

To ensure that DES remedy the areas of noncompliance as soon as possible, the Compliance Agreement sets forth realistic and specific timelines for accomplishing each objective. DES officials and other witnesses testified that DES had already implemented the following actions to fully address three of OSEP's seven findings of noncompliance and begin to address the remaining four findings:

—Development and implementation of intra- and interagency training on Part C;
—Development of model IFSP form to include all federally required elements;
—Development and distribution of appropriate public awareness materials;
—Increase in referrals from and number of children served in certain Indian reservations; and
—Training and professional development of service coordinators.

The actions that remain are long-term strategies to address the principal barriers identified by DES for the successful implementation of Part C. Thus, the Compliance Agreement contains specific plans to develop effective interagency monitoring and cooperation mechanisms regarding collection and reporting of data and compliance policies and procedures. It also requires a review and analysis of system capacity issues including short-term and long-term personnel identification, recruitment and retention policies. Finally, it provides for the delivery of early intervention services based on a team-based model.

The Compliance Agreement also establishes realistic goals and systemic strategies—which will be monitored by the Department—for bringing DES into compliance with Part C. The Compliance Agreement addresses the four major areas of DES's noncompliance with Part C, namely: (1) General Supervision, (2) Timely Evaluations and Assessments and IFSP Development, (3) Timely Provision of Early Intervention Services, and (4) Service Coordination. Under each of these Compliance Agreement areas, DES sets out objectives as well as specific steps that it will take to achieve its objectives and address the noncompliance areas that are at issue in OSEP's monitoring report. The Compliance Agreement also identifies the key parties (including DES, other State agencies and stakeholder groups including the SICC), that will take responsibility for carrying out each of the strategies. Thus, specific parties can be held accountable if an activity delineated in the Compliance Agreement is not properly implemented.

In addition to specifying overall compliance goals, a plan for meeting them, and the party responsible for implementing the specific action steps, the Compliance Agreement also sets out interim objectives that DES must meet during the next three years in attaining compliance with Part C. DES not only is committed to being in full compliance with Part C within three years, but also has a plan to address each objective in as timely a manner as possible. The Compliance Agreement sets forth the data collection and reporting procedures that DES will follow. These provisions will enable the Department to determine whether or not DES is meeting each of its commitments under the Compliance Agreement. The Compliance Agreement, because of the obligations it imposes on DES, will provide the Department with the information and authority it needs to protect the Part C rights of Arizona infants and toddlers with disabilities.

DES has developed a comprehensive plan to address the underlying causes of its failure to comply with Part C. For these reasons, the Department concludes that DES can meet all the terms and conditions of the Compliance Agreement and come into full compliance with Part C no later than three years from the date of the Agreement.

IV. Conclusion

For the foregoing reasons, the Department finds that: (1) Full compliance by DES with the requirements of Part C is not feasible until a future date, and (2) DES can meet the terms and conditions of the attached Compliance Agreement and come into full compliance with the requirements of Part C within three years of the date of this

decision. Therefore, the Department determines that it is appropriate for this agency to enter into a Compliance Agreement with DES. Under the terms of 20 U.S.C. 1234f, this Compliance Agreement becomes effective the date these Written Findings and Decision are signed by the Secretary.

Dated: December 16, 2004.

From Rod Paige,

Secretary, U.S. Department of Education.

Appendix A: Arizona Part C Compliance Agreement.

Compliance Agreement—Under Part C of the Individuals With Disabilities Education Act (IDEA), the Infants and Toddlers With Disabilities Program, Between the United States Department of Education and the Arizona Department of Economic Security

I. Introduction/Background

This Compliance Agreement is entered into under the General Education Provisions Act (GEPA) (at 20 U.S.C. 1234f) between the United States Department of Education (the Department or ED) and the State of Arizona through the Arizona Department of Economic Security (DES) to address certain requirements under Part C of the Individuals with Disabilities Education Act (IDEA) (codified at 20 U.S.C. 1401 through 1407 and 1431 through 1445) and its implementing regulations (at 34 CFR part 303).

Under section 1234f of GEPA, the Department may enter into a Compliance Agreement with the purpose of bringing a grant recipient (DES) into full compliance with the applicable requirements of law as soon as feasible and not to excuse or remedy past violations. Before entering into a compliance agreement, the Department must hold a hearing where the recipient and other affected and interested parties are invited to participate. Compliance agreements must contain an expiration date not later than three years from the date of the Written Findings and the terms and conditions with which the recipient must comply until it is in full compliance. A compliance agreement allows a recipient to continue to receive its grant award while it works toward achieving full compliance under the terms of the agreement.

On March 15, 2004, in response to Arizona's Part C Federal fiscal year (FFY) 2001 Annual Performance Report (APR) and following a State verification monitoring visit by the ED Office of Special Education Programs (OSEP) to Arizona in December 2003, OSEP issued two letters documenting DES's continued noncompliance with the following four requirements: (1) Utilizing effective monitoring procedures to ensure the identification and correction of noncompliance with Part C under 34 CFR 303.501; (2) conducting evaluations and assessments and holding the initial Individualized Family Service Plan (IFSP) meeting within 45 days from initial referral under 34 CFR 303.321(e)(2), 303.322(e)(1) and 303.342(a); (3) providing in a timely manner all early intervention services identified on the IFSP to all eligible infants and toddlers with disabilities, including infants and toddlers on reservations, under 34 CFR 303.342(e); and (4) ensuring that all service coordination functions are implemented under 34 CFR 303.23 and 303.344(g). These same noncompliance findings were four of the seven findings originally identified in OSEP's 2000 Arizona Part C Monitoring Report. Although DES has addressed three of the findings from OSEP's 2000 monitoring report, DES has indicated that it will need more than one year to make systemic changes in its monitoring, data, service delivery, and other systems in order to ensure correction of these remaining four findings.

On March 25, 2004, DES Director David Berns requested that the Department consider entering into a Compliance Agreement with DES under Part C of the IDEA. In addition, Mr. Berns invited OSEP to conduct public hearings in Arizona as required by GEPA prior to the establishment of a Compliance Agreement. On May 20, 2004, OSEP conducted a public hearing in Phoenix, Arizona, regarding DES's ability to meet certain Part C requirements. The testimony and materials either presented at the hearing, or provided in relation to the hearing, by DES representatives, other Arizona participating agencies, Part C providers, and other affected or interested individuals confirmed that, as required under 20 U.S.C. 1234f, full compliance with Part C requirements by DES is genuinely not feasible until a future date, but that DES will be able to come into full compliance with Part C within three years. Testimony and written submissions supported the development of a compliance agreement that would bring DES into compliance with Part C as soon as feasible and allow continuation of Part C funding by OSEP to Arizona during this process. As indicated in the Secretary's Written Findings and Decision of the ED Secretary (Secretary), ED agrees that a compliance agreement is appropriate to address noncompliance and this document reflects the terms of the Compliance Agreement.

II. Parties

The parties to this Compliance Agreement under IDEA, Part C, are the U.S. Department of Education and the Arizona Department of Economic Security (DES). DES is the designated lead agency under Part C of the IDEA. The Arizona Early Intervention Program (DES/AzEIP) is the office within DES that is responsible for the daily administration and oversight of Arizona's early intervention program for infants and toddlers with disabilities and their families under Part C of the IDEA.[1] The Arizona Part C program referred to herein includes the AzEIP participating state agencies (DES, AHCCCS, ADE, ASDB and ADHS) and the providers of early intervention services (whether contractors of AzEIP or other state agency entities).

III. Areas of Identified Noncompliance

Under the terms of this Compliance Agreement, entered into pursuant to 20 U.S.C. 1234f, DES must be in full compliance with the requirements of Part C of IDEA no later than three years from the effective date of this Agreement, which is the date the Secretary signs the Written Findings of Fact and Decision and the Compliance Agreement. Specifically, DES must ensure and document that no later than three years from the effective date of this Agreement, compliance is achieved in each of the following four major areas:

1. *General Supervision:* DES is meeting its general supervision responsibilities and monitoring for compliance with all requirements of Part C, including using appropriate methods to administer the Part C program. In particular, DES is: (1) Monitoring state participating agencies/DES participating programs and governmental or private providers who deliver or contract to deliver Part C services in Arizona; (2) enforcing contractual and/or legal obligations regarding Part C compliance; (3) providing training and technical assistance as needed to providers and governmental participants in the Part C program; and (4) correcting deficiencies identified through monitoring.

2. *Timely Evaluation, Assessment and Development of the IFSP:* DES is ensuring that all potentially eligible infants and toddlers referred to Part C receive timely and comprehensive evaluations in all five developmental areas (cognitive, physical, communication, social/emotional, and adaptive skills). Evaluations and assessments are completed and, if the infant or toddler is eligible, the initial IFSP meeting is conducted within 45 days of the date a referral is received containing sufficient family contact information to enable the Arizona Part C program to contact the family.

3. *Identification and Timely Provision of All Early Intervention Services Specified in IFSPs:* DES is ensuring that all early intervention services identified on the IFSPs are linked to functional outcomes, which are based on the current developmental needs of eligible infants or toddlers with disabilities and the resources, priorities and concerns of their families. DES is also ensuring that all early intervention services identified on the IFSP are provided in a timely manner to all eligible infants and toddlers with disabilities, including Native American families and children residing on reservations.

4. *Service Coordination:* DES is ensuring that each eligible family has a single service coordinator who: (1) Coordinates all services across agency lines; (2) serves as the single point of contact for the family to help parents obtain the services and assistance they need; (3) facilitates timely delivery of available services; (4) seeks appropriate services necessary to benefit the development of each child served for the duration of the child's eligibility; and (5) ensures that all infants and toddlers and their families receive appropriate prior written notice and

[1] The Arizona Part C early intervention statewide system of services comprises the following State agencies and its contractors: (1) DES (which includes AzEIP, and the Division of Developmental Disabilities (DDD) (another unit within DES, and which is a major early intervention service provider in Arizona), (2) the Arizona State Schools for the Deaf and the Blind (ASDB), (3) the Arizona Department of Health Services (ADHS), (4) the Arizona Department of Education (ADE), and (5) the Arizona Health Care Cost Containment System (AHCCCS).

understand their procedural rights and safeguards.

IV. Funding and Work Plans

During the term of the Compliance Agreement, DES is eligible to receive Part C funds if it complies with the terms and conditions of this Agreement and all other provisions of Part C not addressed by this Agreement.

This Compliance Agreement specifies the goals and timetables required for DES to come into full compliance with its Part C obligations in each of the four areas. DES is required to submit documentation concerning its compliance with enumerated activities, goals and timetables. Included in this Compliance Agreement are two individual work plans (Attachments A and B), which address the previously enumerated areas of noncompliance with Part C requirements. These work plans include measurable outcomes, goals/objectives, activities to achieve the goals, target completion dates for each activity and goal, and ways to verify compliance with the work plans during the three-year term of this Agreement. A report on progress made under these work plans, reflecting activities/goals met, any obstacles and other information as to progress shall be submitted by DES quarterly to OSEP. This reporting shall begin the final day of the third month following the effective date of this Agreement, and shall continue quarterly throughout the term of this Agreement. Attachment C, DES/AzEIP's Program Self-Assessment and Monitoring Cycle, supports Attachment A, General Supervision, and describes the schedule for monitoring programs within the State.

Amendments to this Compliance Agreement must be made in writing. If DES determines that any items in the work plans need to be changed or items need to be deleted/added, DES will promptly submit to OSEP in writing any requests for changes to the work plans and the terms of this Compliance Agreement. Within five working days of receipt of any such request, OSEP shall acknowledge via e-mail or letter that the request was received and the date of receipt. OSEP will respond in writing within a reasonable period of time to DES's written requests for amendments. OSEP will review proposed amendments for any activities to achieve compliance including tasks, timelines and reporting requirements; DES is not required to implement those activities that are the subject of proposed amendments and are pending review by OSEP until OSEP has provided its response regarding those activities. Any requests for amendments to the compliance agreement by the State will be responded to in writing by OSEP.

V. Current Status, Goals/Measurable Outcomes and Verification

Area 1: General Supervision

Current Status: The Department's 2000 Monitoring Report found that DES did not have a method for identifying and correcting noncompliance with Part C requirements. OSEP's March 15, 2004 letter following its December 2003 verification monitoring visit to the State confirmed that, although DES had piloted a partial monitoring system, it did not have in place a monitoring system to ensure the monitoring of all entities that provide Part C services as well as monitoring for all Part C compliance requirements. In addition, the March 15, 2004 letter documented that DES did not have in place methods to ensure the correction of any identified noncompliance.

Outcome: DES will utilize effective monitoring and general supervision procedures to ensure the identification and correction of noncompliance with Part C.

Measurable Goals:

Goal 1: DES will monitor all State or contracted programs that provide Part C services in Arizona, for compliance with all Part C requirements.

Goal 2: DES will ensure that deficiencies identified through monitoring are corrected in a timely manner.

Verification: In its quarterly reports to OSEP and through additional specific reporting (as identified on the attached workplans), DES shall submit verification that it has: (1) Revised or replaced its interagency agreement(s) among the AzEIP participating State agencies to address all Part C general supervision requirements; (2) aligned policies and procedures across agencies to include general supervision and Part C compliance issues (on monitoring, data collection, contract review and technical assistance); (3) implemented a monitoring system, which includes analysis of data to identify and correct noncompliance and ensuring correction of identified noncompliance; (4) formalized an interagency technical assistance system; (5) revised its ACTS data system to expand data collection and reporting functions, incorporating timely data access and management reporting at the local and State AzEIP offices; and (6) incorporated data elements and reports into the data systems of other Part C participating State agencies.

Areas 2, 3, and 4: Early Intervention Services in the Natural Environment (EIS–NE): Timely Identification, Individualization and Provision of All Early Intervention and Service Coordination Services

Current Status: OSEP's 2000 monitoring report found that DES had failed to: (1) Conduct evaluations and assessments and hold the initial Individualized Family Service Plan (IFSP) meeting within 45 days from initial referral; (2) individualize, and provide in a timely manner, all early intervention services identified on the IFSP to all eligible infants and toddlers with disabilities, including infants and toddlers on reservations; and (3) ensure that all service coordination functions are implemented. OSEP's March 15, 2004 letter following its December 2003 verification monitoring visit to the State confirmed that the State had not corrected these areas of noncompliance.

Outcomes: The initial IFSP meeting will be held within 45 days of a referral and IFSPs will be individualized based on the child and family's unique needs. All appropriate early intervention services will be identified on the IFSP and provided in a timely manner along with service coordination for all eligible infants and toddlers with disabilities, including infants and toddlers on reservations.

Measurable Goals:

Goal 1: Initial IFSP meetings (and evaluations and assessments) for all infants and toddlers referred to Part C shall be conducted within 45 days of the referral.

Goal 2: All IFSPs shall contain the early intervention services that are needed by the child and family to meet the functional outcomes, which are based on the unique strengths and needs of the child and the resources, priorities and concerns of the family. All eligible infants and toddlers with disabilities and their families shall receive the early intervention services identified on their IFSP in a timely manner.

Goal 3: Each family shall have a single designated service coordinator who shall: (1) Coordinate all services across agency lines; (2) serve as the single point of contact for the family to help it obtain the services and assistance it needs; (3) facilitate timely delivery of available services; (4) seek appropriate services necessary to benefit the development of each child served for the duration of the child's eligibility; and (5) ensure that all families receive appropriate prior written notice and understand their procedural rights and safeguards.

Verification: In its quarterly reports to OSEP and through additional other specific reporting (as identified on the attached work plans), DES shall submit verification that it has: (1) Evaluated the nature and cause of the delays in system capacity issues (timely evaluation and assessments and provision of early intervention services) and implemented appropriate and responsive recruitment and retention strategies; (2) developed an interagency, team-based service delivery model that ensures compliance with timely identification of infants and toddlers with disabilities and provision of services to infants and toddlers with disabilities and their families while maximizing personnel resources; (3) ensured that all service coordination functions are implemented statewide and across agencies; (4) aligned policies and procedures across agencies to ensure compliance with Part C requirements regarding the 45-day timeline, identification and timely provision of early intervention services and service coordination functions; (5) implemented a monitoring system, which includes analysis of data to identify and correct noncompliance and ensuring correction of identified noncompliance regarding 45-day timeline, identification and timely provision of early intervention services and service coordination functions; (6) revised its ACTS data system to expand data collection and reporting on Part C requirements regarding 45-day timeline, identification and timely provision of early intervention services and service coordination functions; and (7) incorporated data elements and reports into the data systems from other Part C participating state agencies (to ensure compliance with 45-day timeline, identification and timely provision of early intervention services and service coordination functions).

VI. Other Terms and Conditions

This Compliance Agreement is executed in two original counterparts in order to provide each party with an original. DES agrees that

its continued eligibility to receive Part C funds is predicated upon compliance with statutory and regulatory requirements of that program, which include requirements not addressed specifically by this Agreement. Any failure by DES to comply with the goals, objectives, timetables, verification or other provisions of the Compliance Agreement, including the reporting requirements, will authorize the Department to consider the agreement no longer in effect. If DES fails to comply with the terms of the Agreement, the Department may take any actions authorized under GEPA at 20 U.S.C. 1200 *et seq.* and the IDEA at 20 U.S.C. 1401 *et seq.* (including 1443–1445). Such actions may include withholding of funds under the IDEA (42 U.S.C. 1416 and 1442), referral to the Department of Justice, and other enforcement mechanisms.

Attachments:

Attachment A: Area 1: General Supervision.

Attachment B: Areas 2, 3 and 4: Early Intervention Services in the Natural Environment.

Attachment C: Program Self Assessment and Monitoring Cycle.

Signed for the Arizona Department of Economic Security:

Dated: December 8, 2004.

David A. Berns,

Director.

Signed for the U.S. Department of Education:

Dated: December 16, 2004.

Rod Paige,

Secretary.

Date this Compliance Agreement Becomes Effective: December 16, 2004.

(Date on which written findings of fact and decision are signed).

BILLING CODE 4000–01–P

Arizona Department of Economic Security
Compliance Agreement
Attachment A

AREA 1: General Supervision

OUTCOME: DES will utilize effective monitoring and general supervision procedures to ensure the identification and correction of noncompliance with Part C.

Measurable Goals:

Goal 1: DES will monitor all State or contracted programs that provide Part C services in Arizona, for compliance with all Part C requirements.

Goal 2: DES will ensure that deficiencies identified through monitoring are corrected in a timely manner.

With prior written approval from OSEP, adjustment to the Tasks and Activities to Reach Results column listed in this table may be made when necessary to support achievement of compliance outcomes within the required timelines. The Tasks and Activities to Reach Results will be evaluated every six months to determine their effectiveness and any need for change. Any requests for change or amendments will be submitted to OSEP in writing.

Objective GS 1: Revise the Interagency Agreement(s) with the AzEIP participating State agencies to address general supervision requirements.

Tasks and Activities to Reach Results	Verification	Target Completion Date	Date Completed	Lead and Primary Partners
GS.1A. Identify the issues that need to be included in the Interagency Agreement(s) with each AzEIP participating state agency (DES, ASDB, ADHS, ADE, and AHCCCS).	Summary of progress in quarterly report to OSEP.	**3 months**[1]		AzEIP Executive Director, State Interagency Team, Legal Counsel for each agency
GS.1B. Convene the State Interagency Team and its legal counsel to draft Interagency Agreement(s).	Draft of the Interagency Agreement(s) to OSEP	**5 months**		AzEIP Executive Director, State Interagency Team, Legal Counsel for each agency
GS.1C. Publish the Interagency Agreement(s) for public comment.	Interagency Agreement(s) published for public comment	**9 months**		AzEIP Executive Director
GS.1D. State Interagency Team members will have legal counsel review the revised Interagency Agreement(s) that reflects changes resulting from public comment.	Summary of changes made in quarterly report to OSEP.	**12 months**		AzEIP Executive Director, State Interagency Team, Legal Counsel for each agency
GS.1E. Obtain signatures of parties on Interagency Agreement(s).	Summary of progress in quarterly report to OSEP.	**15 months**		AzEIP Executive Director, State Interagency Team
GS.1F. File the Interagency Agreement(s) with Secretary of State.	Summary of progress in quarterly report to OSEP.	**16 months**		DES
GS.1G. Disseminate and implement Interagency Agreement(s).	Final Interagency Agreement(s) submitted to OSEP and summary of implementation progress in quarterly reports to OSEP.	**16 months and ongoing**		DES/AzEIP

[1] The target completion date for any reports or documentation is the final day of the month following the date on which the Compliance Agreement is signed by both parties. Thus, if the Compliance Agreement is signed on August 1, 2004, a "3 months" completion date requires reporting on November 30, 2004. Quarterly reports are due on the last day of every third month following the date the Compliance Agreement is signed by both parties. The FFY 2003 through FFY 2005 Part C Annual Performance Reports (APRs) submitted during the period of the Compliance Agreement may serve as the quarterly reports under the Compliance Agreement as long as the content requirements for both the APR and the Compliance Agreement are addressed in the APR submission.

Objective GS 2: Align policies and procedures across agencies to include general supervision and ensure compliance with Part C (on monitoring, data collection, contract review, and technical assistance).

Tasks and Activities to Reach Results	Verification	Target Completion Date	Date Completed	Lead and Primary Partners
GS.2A. Draft the policies and procedures review checklist (on monitoring, data collection, contract review, and technical assistance).	Summary of progress in quarterly report to OSEP.	**3 months**		AzEIP Professional Development Coordinator
GS.2B. Review DDD, ASDB and ADHS policies and procedures for compliance with IDEA, Part C and provide information regarding inconsistency with IDEA, Part C and AzEIP policies (regarding Part C requirements including monitoring, data collection, contract review, and technical assistance).	Summary of progress in quarterly report to OSEP.	**10 months**		Continuous Quality Improvement Coordinators, and DDD, ASDB, ADHS Partners
GS.2C. If needed, agencies will draft revised policies and procedures to resolve discrepancies (regarding Part C requirements including monitoring, data collection, contract review, and technical assistance) and ensure agency staff and contractors understand revisions.	If DES/AzEIP determines that an agency policy or procedure is out of compliance with IDEA, Part C, DES/AzEIP will submit revised policy to OSEP for approval.	**18 months**		Continuous Quality Improvement Coordinators, and DDD, ASDB, ADHS Partners
GS.2D. Finalize policies and procedures from GS.2C. above.	Summary of progress in quarterly report to OSEP and submit finalized policies and procedures to OSEP if required as part of Part C Application.	**24 months**		Continuous Quality Improvement Coordinators and DDD, ASDB, ADHS Partners
GS.2E. Implement finalized policies and procedures.	Summary of progress on implementation of new policies and procedures to OSEP in quarterly report.	**24 – 36 months**		Continuous Quality Improvement Coordinators and DDD, ASDB, ADHS Partners

Objective GS 3: Implement the monitoring system, which includes analysis of data and ensures corrective action.

Tasks and Activities to Reach Results	Verification	Target Completion Date	Date Completed	Lead and Primary Partners
GS.3A. Review and, if needed, revise the Continuous Monitoring and Quality Improvement tools and procedures to ensure compliance with service coordination requirements and the individualization of early intervention services. The Continuous Monitoring and Quality Improvement system will track: (1) The IFSPs on which services are not linked to functional outcomes that are based on the families' priorities, resources and concerns and the child's current levels of development; and (2) The number of IFSPs on which a single service coordinator is not identified.	Summary of progress in quarterly report to OSEP, which will include data on service coordination and identification of early intervention services needed on the IFSP.	**5 months for service coordination and IFSP identification of services data. Ongoing reporting in the Part C annual APR (FFYs 2003, 2004 and 2005) and annually thereafter on 9/30/05, 9/30/06 and 9/30/07.**		Continuous Quality Improvement Coordinators, Technical Assistance Specialist
GS.3B. Statewide orientation and training on the AzEIP Monitoring System, with emphasis on the Program Self-Assessment (See Attachment C) provided to Program Supervisors contracted or employed by DES/AzEIP, DES/DDD, ASDB, and ADHS.	Summary of progress in quarterly report to OSEP, including the number of participants.	**6 months**		Continuous Quality Improvement Coordinators, Local Program Coordinators, and Program Supervisors
GS.3C. Revise the family surveys and family interview questions to incorporate newly identified compliance elements and Annual Performance Report indicators.	Revised Family Surveys submitted to OSEP.	**6 months**		Continuous Quality Improvement Coordinators, Technical Assistance Specialist, Local Program Coordinators, and the

				Evaluation and Monitoring Committee of the ICC
GS.3D. Implement the Program Self Assessment[2] with Service Coordination providers statewide (see annual cycle in Attachment C).	Summary of progress in quarterly report to OSEP.	**6 months**		Continuous Quality Improvement Coordinators, Local Program Coordinators, and Service Coordination Supervisors
GS.3E. Implement the "Desk Audit" process: Analyze available data from all sources, including comparison over time, and utilize analysis to identify issues of compliance and noncompliance.	Summary of analysis of State and county data.	**12 months and annually thereafter**		Continuous Quality Improvement Coordinators, Technical Assistance Specialist
GS.3F. Implement the site review cycle (see 5-year cycle in Attachment C)	Sample of "reports of findings," summary of all findings made and summary of progress in quarterly report to OSEP.	**10 months and in each APR thereafter**		Continuous Quality Improvement Coordinators, State Interagency Monitoring Team
GS. 3G. Utilize information from the Program Self-Assessment, the Desk-Audit and the Site Review (if conducted that year) to identify areas of noncompliance and require the establishment of a corrective action plan.	Summary of analysis of State and county data.	**12 months and annually thereafter**		Continuous Quality Improvement Coordinators, Monitoring/Technical Assistance Specialists
GS.3H. Review and approve corrective action plans (CAPs) for counties and ensure correction.	Copies of first two CAPs approved by AzEIP to OSEP and summaries of CAP findings, corrective actions taken and correction data to OSEP	**15 months and every quarterly report thereafter.**		Continuous Quality Improvement Coordinators, Technical Assistance Specialist

[2] Arizona's statewide monitoring system comprises the following components: (1) Program Self Assessment that utilizes multiple data sources and evaluates program performance and practices related to Part C requirements; (2) Desk Audit conducted by AzEIP which includes a review of IFSPs and Arizona's child tracking system data; (3) family surveys and family interviews; (4) Site Reviews which include file audits of personnel, child and financial information; and (5) community level and agency level reviews. See Attachment C for the five-year monitoring cycle schedule.

	thereafter.			
GS.3I. Utilize available data to confirm that corrective action measures have resulted in compliance with identified issues.	Summary of analysis of State and county data.	**22 months and every 6 months thereafter**		Continuous Quality Improvement Coordinators, Technical Assistance Specialist, State Interagency Monitoring Team

Objective GS 4: Formalize a technical assistance system that ensures that programs have access to technical assistance that supports their implementation of corrective action and attainment of compliance.

Tasks and Activities to Reach Results	Verification	Target Completion Date	Date Completed	Lead and Primary Partners
GS.4A. Establish technical assistance priorities.	Summary of priorities in quarterly report to OSEP	**4 months**		Continuous Quality Improvement Coordinators, AzEIP Professional Development Coordinator, State Interagency Team
GS.4B. DES/AzEIP establishes procedures for accessing technical assistance.	Summary of progress in quarterly report to OSEP	**4 months**		AzEIP Professional Development Coordinator
GS.4C. With input from the State Interagency Team, identify individuals with expertise in priority areas to form the technical assistance cadre.	Summary of progress in quarterly report to OSEP	**6 months**		AzEIP Professional Development Coordinator, State Interagency Team,
GS.4D. DES/AzEIP disseminates procedures for accessing technical assistance.	Summary of progress in quarterly report to OSEP	**6 months**		AzEIP Professional Development Coordinator
GS.4E. DES/AzEIP monitors use of technical assistance resources to ensure accessibility, timeliness, relevance and effectiveness of the technical assistance system.	Summary of assessment in quarterly report to OSEP	**12 months and annually thereafter**		AzEIP Professional Development Coordinator

Objective GS.5: Revise the ACTS system to expand data collection and reporting functions; incorporating timely data access and management reporting at the local and State AzEIP offices for monitoring purposes.

Tasks and Activities to Reach Results	Verification	Target Date	Date Completed	Lead and Primary Partners
GS.5A. Identify the required components of each data report, how often data will be collected, and how data will be entered and validated.	Summary of progress in quarterly report to OSEP	**3 months**		Management Information Specialist, DES System and Programming, Continuous Quality Improvement Coordinators and Technical Assistance Specialist
GS.5B. Identify data elements for Part C compliance elements including the: (1) Number of infants and toddlers for whom evaluations and assessments were not completed within 45 days of the initial referral; (2) Number of infants and toddlers for whom the initial IFSP meeting was not held within 45 days from the date of referral; (3) Extent of the delay (i.e., the number of days past the 45 day timeline) for infants and toddlers identified under (1) and (2) above; (4) Reasons for delay in meeting the 45-day timeline requirement for (1) and (2) above, including lack of evaluation personnel in either a specific discipline or county, family unavailability, service coordinator or evaluator unavailability or other reasons; (5) Number of infants and toddlers with disabilities and their families who are not receiving all the Part C services listed on the infant or toddler's IFSP; (6) Type(s) of early intervention service(s) (including services to families as well as to infants and toddlers with disabilities) that have waiting lists and, for each early intervention service, the number of infants and toddlers with disabilities on the	Summary of progress in quarterly report to OSEP	**5 months**		Management Information Specialist, DES System and Programming, Continuous Quality Improvement Coordinators and Technical Assistance Specialist

waiting list for that particular intervention service at the beginning of the reporting period; and (7) For each early intervention service for which there is a waiting list, the number of days that each eligible infant or toddler or the family is on the waiting list.				
GS.5C. Code and test ACTS data system to ensure that data elements listed in GS.5B are included and are capable of being input.	Summary of progress in quarterly report to OSEP	**5 months**		Management Information Specialist, DES System and Programming, Continuous Quality Improvement Coordinators and Technical Assistance Specialist
GS.5D. Establish an implementation plan for the collection of the data.	Summary of progress in quarterly report to OSEP	**6 months**		Management Information Specialist, DES System and Programming, Continuous Quality Improvement Coordinators and Technical Assistance Specialist
GS.5E. Implement the revised data system to ensure collection of revised data elements from GS.5B.	Summary of progress in quarterly report to OSEP	**7 months and each quarterly report thereafter**		Management Information Specialist, Continuous Quality Improvement Coordinators and Technical Assistance Specialist
GS.5F. Evaluate Results • Check reports for accuracy • Check if data is properly entered and validated • Develop plan to correct, if needed • Technical Assistance, if needed • Fix production problems and retest and retrain, if needed.	Summary and analysis of initial data collected on GS.5B Part C compliance data elements.	**13 months**		Management Information Specialist, DES System and Programming, Continuous Quality Improvement Coordinators and Technical Assistance Specialist

Objective GS.6 Incorporate data elements and reports into the State Agencies' Data Systems.

Tasks and Activities to Reach Results	Verification	Target Completion Date	Date Completed	Lead and Primary Partners
GS.6.1.A. Work with DDD to revise the DDD data system to ensure inclusion of required data elements from GS.5B. above; reports and transfer of data to and from AzEIP.	Summary of progress in quarterly report to OSEP.	**10 months**		Management Information Specialist and Technical Assistance Specialist and DDD
GS.6.1.B. Implement and monitor the revised DDD system.	Summary of progress in quarterly report to OSEP.	**12 months**		Management Information Specialist and Technical Assistance Specialist and DDD
GS.6.1.C. Provide technical assistance, as needed, to resolve production problems, re-test and retrain.	Summary of technical assistance in quarterly report to OSEP.	**12 months and ongoing, as needed**		Management Information Specialist and Technical Assistance Specialist and DDD
GS.6.2.A. Work with ADHS to revise data system to ensure inclusion of required data elements from GS.5B. above; reports and transfer of data to and from AzEIP.	Summary of progress in quarterly report to OSEP.	**3 months**		Management Information Specialist and Technical Assistance Specialist and ADHS
GS.6.2.B. Implement and monitor the revised ADHS system.	Summary of progress in quarterly report to OSEP.	**5 months**		Management Information Specialist and Technical Assistance Specialist and ADHS
GS.6.2.C. Provide technical assistance, as needed, to resolve production problems, re-test and retrain.	Summary of technical assistance in quarterly report to OSEP.	**7 months and ongoing, as needed**		Management Information Specialist and Technical Assistance Specialist and ADHS
GS.6.3.A. Work with ASDB data system to ensure inclusion of required data elements from GS.5B. above; reports and transfer of data to and from AzEIP.	Summary of progress in quarterly report to OSEP.	**3 months**		Management Information Specialist and Technical Assistance Specialist and ASDB

GS.6.3.B. Implement and monitor the revised ASDB system.	Summary of progress in quarterly report to OSEP.	**5 months**		Management Information Specialist and Technical Assistance Specialist and ASDB
GS.6.3.C. Provide technical assistance, as needed, to resolve production problems, re-test and retrain.	Summary of technical assistance in quarterly report to OSEP.	**7 months and ongoing, as needed**		Management Information Specialist and Technical Assistance Specialist and ASDB

Arizona Department of Economic Security
Compliance Agreement
Attachment B

AREAS 2, 3 and 4: Early Intervention Services in the Natural Environment (EIS-NE):
Timely Identification, Individualization and Provision of all Early Intervention and Service Coordination Services

OUTCOME: The evaluation and assessment and initial IFSP meeting will be held within 45 days of the referral. IFSPs will be individualized based on the child and family's unique needs. All appropriate early intervention services will be identified on the IFSP and provided in a timely manner along with service coordination for all eligible infants and toddlers with disabilities, including infants and toddlers on reservations.

Measurable Goals:

Goal 1: Initial IFSP meetings (and evaluations and assessments) for all infants and toddlers referred to Part C shall be conducted within 45 days of the referral.

Goal 2: All IFSPs shall contain the early intervention services needed by the child and family to meet the functional outcomes, which are based on the unique developmental needs of the child and the resources, priorities and concerns of the family. All eligible infants and toddlers with disabilities and their families shall receive the early intervention services identified on their IFSP in a timely manner.

Goal 3: Each family has a single designated service coordinator who shall: 1) coordinate all services across agency lines; 2) serve as the single point of contact for the family to help it obtain the services and assistance they need; 3) facilitate timely delivery of available services; 4) seek appropriate services necessary to benefit the development of each child served for the duration of the child's eligibility, and; (5) ensure that all families receive appropriate prior written notice and understand their procedural rights and safeguards.

With prior written approval from OSEP, adjustment to the Tasks and Activities to Reach Results column listed in this table may be made when necessary to support achievement of compliance outcomes within the required timelines. The Tasks and Activities to Reach Results will be evaluated every six months to determine their effectiveness and any need for change. Any requests for change or amendments will be submitted to OSEP in writing.

Objective EISNE 1: Evaluate the nature and cause of the system capacity issues.

Tasks and Activities to Reach Results	Verification	Target Completion Date	Date Completed	Lead and Primary Partners
EISNE 1A. Investigate personnel shortages to identify the extent and regional variations, which may impact service delivery.	Summary of progress in quarterly report to OSEP.	**12 months and ongoing**		AzEIP Professional Development Coordinator, AzEIP Staff Development and Training Project, Technical Assistance Specialist, Management and Information Specialist
EISNE 1A.1 With the assistance of the Arizona State Licensing Boards for Speech Language Pathology, Physical Therapy, and Occupational Therapy, determine the total number of professionals licensed in the State.	Summary of data in quarterly report to OSEP.	**6 months**		AzEIP Professional Development Coordinator, Technical Assistance Specialist, and AzEIP Staff Development and Training Project
EISNE 1A.2 Compare regional personnel analyses to the regional and agency/program reporting of wait lists.	Summary of data (including regional personnel analyses) in quarterly report to OSEP.	**15 months and in each quarterly report thereafter**		Continuous Quality Improvement Coordinators, Technical Assistance Specialist, AzEIP Professional Development Coordinator
EISNE 1B. Conduct analysis of existing personnel database and program personnel reporting to identify the discipline-specific turnover rates.	Summary of data in quarterly report to OSEP	**6 months**		AzEIP Professional Development Coordinator, AzEIP Staff Development and Training Project
EISNE 1B.1.Conduct a regional comparison of service provider rates of payment and analysis of how sources of payment affect provider availability	Summary of data in quarterly report to OSEP	**6 months**		AzEIP Professional Development Coordinator, AzEIP Participating Agency

(across the AzEIP participating agencies' contracts, AHCCCS, private insurance, public schools and rehabilitation centers in the State).				Representatives

Objective EISNE 2: Identify and implement personnel recruitment and retention strategies.

EISNE 2A. Establish and maintain regional directories of providers that will be available to agencies and programs that are building or expanding the service-providing network.	Summary of progress in quarterly report to OSEP	**6 months and annually thereafter**		Local Program Coordinators, Technical Assistance Specialist, Professional Development Coordinator
EISNE 2B. Through newsletters and conference presentations, partner with State Professional Associations to reach greater numbers of qualified personnel who are interested in providing early intervention services.	Summary of activities in quarterly report to OSEP.	**3 months and annually thereafter**		AzEIP Professional Development Coordinator
EISNE 2C. Work with the Institutes of Higher Education (IHE) to encourage students to prepare for the field of early intervention, recruit new graduates and incorporate the AzEIP Standards of Practice requirements into preservice curricula.	Summary of progress in quarterly report to OSEP	**12 months and annually thereafter**		AzEIP Professional Development Coordinator, AzEIP Staff Development and Training Project

Objective EISNE 3: Develop an interagency, team-based service delivery model that ensures compliance with timely identification of infants and toddlers with disabilities and provision of services to infants and toddlers with disabilities and their families while maximizing personnel resources.

Tasks and Activities to Reach Results	Verification	Target Completion Date	Date Completed	Lead and Primary Partners
EISNE 3A. Draft an interagency, team-based service delivery model (for service providing agencies) that ensures compliance and maximizes personnel resources (and include in the model, if needed, alternative rate structures that create incentives for team-based provision of early intervention services in natural environments).	Summary of progress in quarterly report to OSEP.	**12 months**		AzEIP Executive Director, State Interagency Team, DES/AzEIP Staff
EISNE 3B. Facilitate broad public review and comment on the proposed service delivery model.	Summary of progress in quarterly report to OSEP. Submit proposed service delivery model to OSEP.	**15 months**		AzEIP Executive Director, State Interagency Team, DES/AzEIP Staff
EISNE 3C. Implement an interagency plan to support the proposed model of service delivery, including the establishment of new contracts and/or the revision of policies and procedures.	Summary of progress in quarterly report to OSEP.	**24 months**		AzEIP Executive Director, State Interagency Team, DES/AzEIP Staff

Objective EISNE 4: Ensure that all service coordination functions are implemented statewide and across agencies.

Tasks and Activities to Reach Results	Verification	Target Completion Date	Date Completed	Lead and Primary Partners
EISNE 4A. Utilize data from the monitoring system to evaluate the implementation of service coordination functions.	Summary of data in Annual Performance Reports and six months thereafter.	**Annual Performance Reports and a 6 month midpoint summary between Annual Performance Reports**		Technical Assistance Specialist, Continuous Quality Improvement Coordinators
EISNE 4B. If noncompliance is identified, develop a corrective action plan.	Summary of progress in quarterly report to OSEP	**12 months**		Technical Assistance Specialist, Continuous Quality Improvement Coordinators, State Interagency Team
EISNE 4C. Monitor implementation of	Summary of progress in	**18 months and ongoing**		Continuous Quality

corrective action plans	quarterly report to OSEP			Improvement Coordinators, Technical Assistance Specialist, AzEIP Professional Development Coordinator

Objective EISNE 5: Align policies and procedures across agencies to include general supervision and ensure compliance with Part C (to ensure compliance with 45-day timeline, identification and timely provision of early intervention services and service coordination functions).

Tasks and Activities to Reach Results	Verification	Target Completion Date	Date Completed	Lead and Primary Partners
EISNE 5A. Draft a checklist for consistently reviewing policies and procedures for Part C compliance (regarding 45-day timeline, service provision and service coordination).	Summary of progress in quarterly report to OSEP.	**3 months**		AzEIP Professional Development Coordinator
EISNE 5B. Review DDD, ASDB and ADHS policies and procedures for compliance with IDEA, Part C (regarding 45-day timeline, service provision and service coordination) and provide information regarding any inconsistency with IDEA, Part C and AzEIP policies.	Summary of progress in quarterly report to OSEP.	**10 months**		Continuous Quality Improvement Coordinators and DDD, ASDB and ADHS partners
EISNE 5C. If needed, agencies will draft revised policies and procedures to resolve discrepancies (regarding 45-day timeline, service provision and service coordination) and ensure staff and contractors understand revisions.	If DES/AzEIP determines that an agency policy or procedure is out of compliance with IDEA, Part C, DES/AzEIP will submit revised policy or procedure to OSEP.	**18 months**		Continuous Quality Improvement Coordinators, and DDD, ASDB and ADHS partners
EISNE 5D. Finalize revised policies and procedures from EISNE 5C. above.	Summary of progress in quarterly report to OSEP.	**24 months**		Continuous Quality Improvement Coordinators, and DDD,

				ASDB and ADHS partners
EISNE 5E. Implement finalized policies and procedures.	Summary of progress (and implementation of revised finalized policies and procedures) to OSEP in quarterly report.	**24 – 36 months**		Continuous Quality Improvement Coordinators and DDD, ASDB, and ADHS Partners

Objective EISNE 6: Implement the monitoring system, which includes analysis of data and ensures corrective action (to ensure compliance with 45-day timeline, identification and timely provision of early intervention services and service coordination functions).

See Task and Activities to Reach Results, Verification, Target Completion Date and Lead and Primary Partners under GS. 3 above.

Objective EISNE 7: Revise the ACTS system to expand data collection and reporting functions; incorporating real-time data access and management reporting at the local and DES/AzEIP locations (to ensure compliance with 45-day timeline, identification and timely provision of early intervention services and service coordination functions).

See Task and Activities to Reach Results, Verification, Target Completion Date and Lead and Primary Partners under GS. 5 above.

Objective EISNE 8: Incorporate data elements and reports into the State Agencies Data Systems (to ensure compliance with 45-day timeline, identification and timely provision of early intervention services and service coordination functions).

See Task and Activities to Reach Results, Verification, Target Completion Date and Lead and Primary Partners under GS. 6 above.

ARIZONA PART C COMPLIANCE AGREEMENT

ATTACHMENT C

Program Self-Assessment and Monitoring Cycle

Cycle 1: **Maricopa County**
Cycle 2: **Yuma, La Paz, Mohave, and Yavapai Counties**
Cycle 3: **Coconino, Navajo, Apache Counties and Navajo Nation**
Cycle 4: **Cochise, Graham, Greenlee, Pinal and Gila Counties**
Cycle 5: **Pima and Santa Cruz Counties**

ACRONYMS
PSA = Program Self Assessment
T/A = Technical Assistance
YR= Year
CAP = Corrective Action Plan

ANNUAL PROGRAM SELF-ASSESSMENT CYCLE

Year	January-March	April-June	July-September	October-December
Year 1 2004		•Cycle 1 PSA due	•Cycle 2 & 3 PSA due	•Cycle 4 & 5 PSA due

5 Year Site Review Cycle

Year	January-March	April-June	July-September	October-December
Year 1 2004		•Notify programs and schedule site reviews for Cycle 1	•Cycle 1 Site reviews in Aug/Sept •Prepare reports of findings for Aug visits	•Oct-prepare report of findings for Sep visits •CAP due for Cycle 1 •Notify programs and schedule Cycle 2 site review
Year 2 2005	•State Team approves CAP for Cycle 1 – January and notify programs	•Conduct Cycle 2 site reviews •Prepare reports of findings Cycle 2	•CAP due for Cycle 2 •Cycle 1 programs demonstrate compliance – September	•State Team approves Cycle 2 CAP and notify programs

		•YR 1 submit 6 month CAP update-June		
Year 3 2006	•Cycle 2 submit CAP 6 month update •Notify programs and schedule site reviews for Cycle 3	•Cycle 2 demonstrates full compliance •Conduct site reviews for Cycle 3 •Prepare Cycle 3 reports	•Cycle 3 programs submit CAP •State Team approves Cycle 3 CAP and notifies programs	•Notify programs and schedule site reviews for Cycle 4
Year 4 2007	•Cycle 3 submit 6 month CAP updates •Cycle 4 site monitoring reviews • Prepare reports of findings for Cycle 4 reviews	•Cycle 3 demonstrate full compliance •Cycle 4 CAP due •State Team approves Cycle 4 CAP and notify programs	•Cycle 4 programs submit 6 month CAP updates	•Notify programs and schedule Cycle 5 site reviews
Year 5 2008	•Cycle 4 demonstrate full compliance •Cycle 5 site reviews •Prepare Cycle 5 reports	•Cycle 5 CAP due •State Team approves Cycle 5 CAP and notifies programs •Notify and schedule Cycle 1 site reviews	•Cycle 5 submit six month CAP update •Cycle 1 site visit •Prepare reports Cycle 1	•Cycle 5 demonstrates full compliance •Cycle 1 CAP due

[FR Doc. 05–4199 Filed 3–3–05; 8:45 am]

BILLING CODE 4000–01–C

Federal Register

Friday,
March 4, 2005

Part V

The President

Proclamation 7872—Women's History Month, 2005

Notice of March 2, 2005—Continuation of the National Emergency Blocking Property of Persons Undermining Democratic Processes or Institutions in Zimbabwe

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 7872 of March 2, 2005

Women's History Month, 2005

By the President of the United States of America

A Proclamation

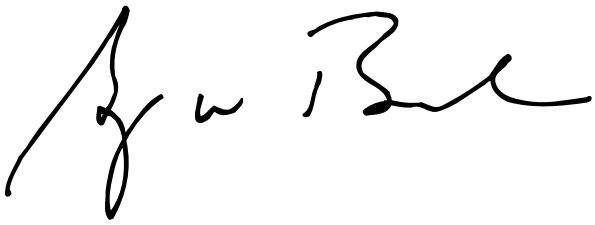
During Women's History Month, we celebrate the achievements of our Nation's women. For generations, American women have helped build our great Nation through their leadership as writers, teachers, artists, politicians, doctors, and scientists, and in other professions. As mothers, daughters, and sisters, women have supported and strengthened American families and communities. Women are at the forefront of entrepreneurship in America, creating millions of new jobs and helping to build our Nation's economic prosperity.

We celebrate those who have broken down barriers for women, such as Jacqueline Cochran, who was the founder and director of the Women's Air Force Service Pilots during World War II and the first woman to break the sound barrier. Gerty Theresa Radnitz Cori was the first American woman to receive a Nobel Prize in the sciences, and her research significantly advanced the treatment of diabetes. In 1926, Olympic Gold Medalist Gertrude Ederle became the first woman to swim the English Channel. Marian Anderson, a Presidential Medal of Freedom recipient, opened doors in music as the first African American to perform with the New York Metropolitan Opera. Juliette Gordon Low encouraged community service and the physical, mental, and spiritual development of America's young women as founder of the Girl Scouts of the United States of America. As we work to advance freedom and peace and fight the war on terror, American women in uniform are serving at posts at home and across the world, taking great risks as they make our Nation more secure.

As we commemorate Women's History Month, I encourage all Americans to celebrate the extraordinary contributions and accomplishments of American women and to continue our progress in making our society more prosperous, just, and equal.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 2005 as Women's History Month. I call upon the people of the United States to observe this month with appropriate programs, ceremonies, and activities that honor the history, accomplishments, and contributions of American women.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of March, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 05–4396
Filed 3–3–05; 9:22 am]
Billing code 3195–01–P

Presidential Documents

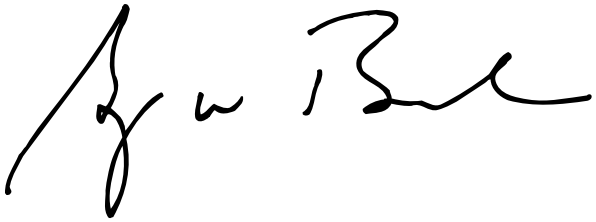
Notice of March 2, 2005

Continuation of the National Emergency Blocking Property of Persons Undermining Democratic Processes or Institutions in Zimbabwe

On March 6, 2003, by Executive Order 13288, I declared a national emergency blocking the property of persons undermining democratic processes or institutions in Zimbabwe, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). I took this action to deal with the unusual and extraordinary threat to the foreign policy of the United States constituted by the actions and policies of certain members of the Government of Zimbabwe and other persons to undermine Zimbabwe's democratic processes or institutions, thus contributing to the deliberate breakdown in the rule of law in Zimbabwe, to politically motivated violence and intimidation in that country, and to political and economic instability in the southern African region.

Because the actions and policies of these persons continue to pose an unusual and extraordinary threat to the foreign policy of the United States, the national emergency declared on March 6, 2003, and the measures adopted on that date to deal with that emergency, must continue in effect beyond March 6, 2005. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency blocking the property of persons undermining democratic processes or institutions in Zimbabwe.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
March 2, 2005.

[FR Doc. 05–4397
Filed 3–3–05; 9:22 am]
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